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Vol. I

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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

No. 639

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vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

(35,557, 35,558, 35,559, 35,560, 35,561, 35,562, 35,563, 35,564, 35,565)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 9, 1931

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

No. 642

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

VOL. I

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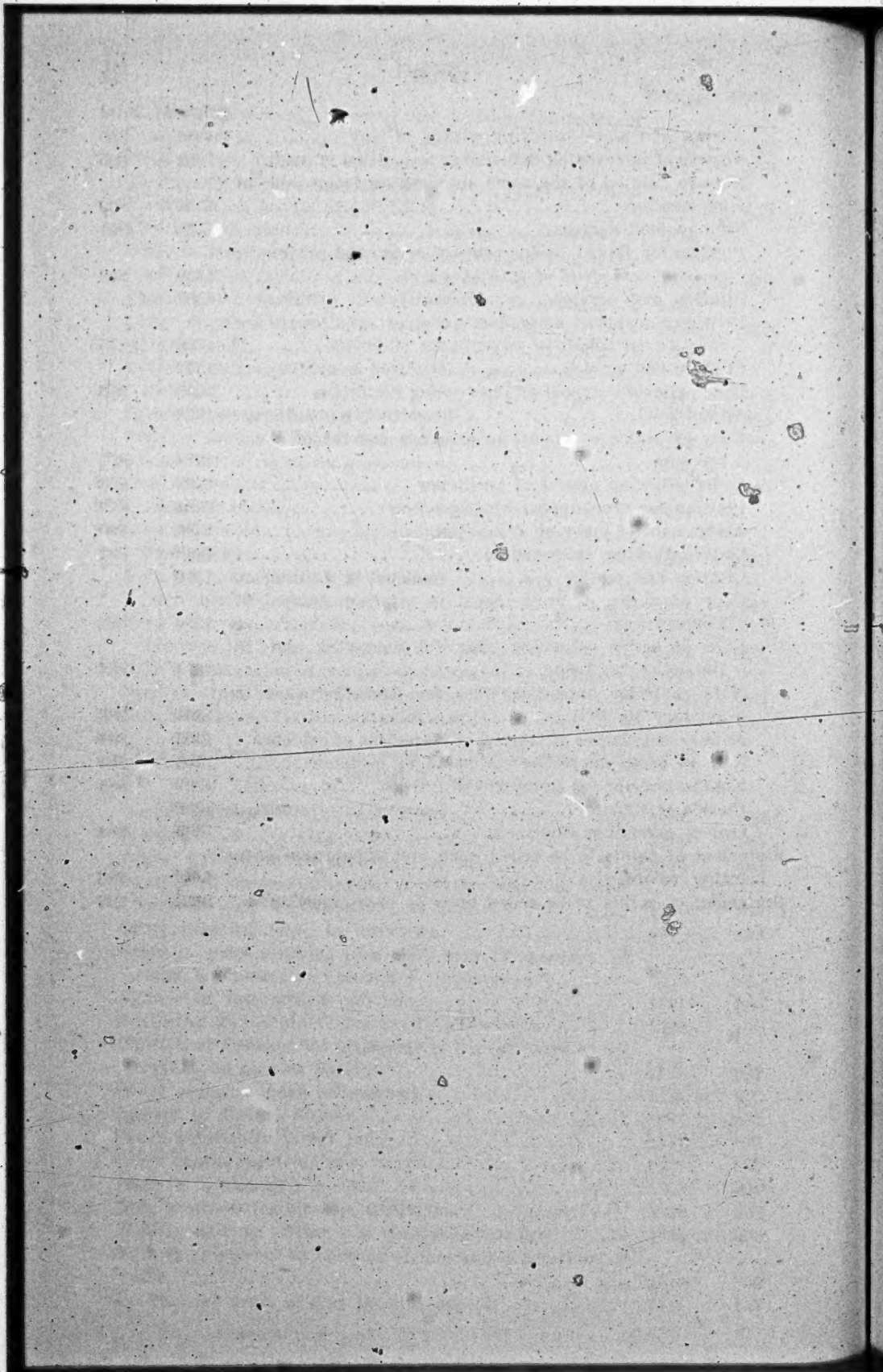

[fols. 1-3]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1929

5781

THE MERCHANTS WAREHOUSE COMPANY, Plaintiff; Commercial Exchange of Philadelphia, Grocer's and Importers Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, The Association of Manufacturers Representatives, Inc., Intervening Plaintiffs,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Defendants; James Gallagher, Northeastern Warehouse Co., Walter A. Bailey, Terminal Warehouse Company, Intervening Defendants

A. S. Olmsted, 2nd, Esq., W. A. Glasgow, Jr., Esq., M. Hampton Todd, Esq.
Saul, Ewing, Remick & Saul, Esqs.
Elmer B. Collins, Esq., J. Stanley Payne, Esq.
T. L. Reiniel, Esq., John J. Hickey, Esq.

DOCKET ENTRIES

February 14, 1930.—Petition to enjoin defendants from enforcing and to annul order of Interstate Commerce Commission of December 28, 1929, filed.

February 17, 1930.—Decree fixing February 21, 1930, for hearing application for temporary stay of operation of Order of Interstate Commerce Commission filed.

February 17, 1930.—Proof of service of copy of petition filed.

February 20, 1930.—Order of Court amending Decree of February 17, 1930 by substituting the name of Honorable O. B. Dickinson in place of Honorable Wm. H. Kirkpatrick filed.

February 21, 1930.—Motion to amend petition and decree allowing motion filed.

February 21, 1930.—Petition by James Gallagher, et al. for leave to intervene as defendants and Decree granting petition filed.

[fol. 4] February 21, 1930.—Decree granting temporary stay of order of Interstate Commerce Commission filed.

February 25, 1930.—Answer of Northeastern Warehouse Company et al., intervening defendants filed.

March 4, 1930.—Appearance of T. L. Reinel, Esq., for intervening defendants; filed.

March 6, 1930.—Answer of Interstate Commerce Comsion filed.

March 6, 1930.—Testimony filed.

March 8, 1930.—Petition by Commercial Exchange of Philadelphia et al. for leave to intervene as party plaintiffs and decree granting prayer of petition filed.

March 15, 1930.—Answer by United States of America filed.

March 26, 1930.—Argued.

March 27, 1930.—Decree amending decree of February 17, 1930, by substituting the name of Hon. Joseph Buffington in place of Hon. Victor B. Woolley, filed.

March 27, 1930.—Argument resumed.

March 28, 1930.—Argument concluded.

April 15, 1930.—Decree continuing temporary stay of order of Interstate Commerce Commission filed.

October 8, 1930.—Opinion, Thompson, J. (Dickinson, J. concurring, Buffington, J. dissenting) dismissing Petition of February 14, 1930 to enjoin defendants from enforcing order of Interstate Commerce Commission, filed.

November 5, 1930.—Petition for order staying enforcement of Order of Interstate Commerce Commision pending appeal filed.

November 5, 1930.—Opinion, Thompson, J. sur findings of fact and conclusions of law filed.

November 10, 1930.—Answer of intervening defendants to petition of Merchants Warehouse Company for order staying enforcement of Order of Interstate Commerce Commission pending appeal filed.

November 14, 1930.—Answer of Interstate Commerce Commission to petition for order staying enforcement of Order of Interstate Commerce Commission pending appeal filed.

November 17, 1930.—Answer of United States to petition for stay of order of Interstate Commerce Commission pending appeal filed.

November 19, 1930.—Exceptions by petitioner to findings of fact and conclusions of law filed.

November 19, 1930.—Argued sur settlement of decree and petition for appeal and supersedeas.

[fol. 5] November 19, 1930.—Final Decree dissolving temporary orders of February 21, 1930, and April 15, 1930, staying and suspending Order of Interstate Commerce Commission overruling plaintiffs exceptions to findings of fact and conclusions of law and dismissing petition to enjoin defendants from enforcing order of Interstate Commerce Commission of December 28, 1929, filed.

November 19, 1930.—Opinion (per curiam) granting order of supersedeas and allowing exceptions thereto filed.

November 19, 1930.—Petition for appeal, assignments of error, and prayer for reversal of decree of November 19, 1930, filed.

November 19, 1930.—Decree granting petition for appeal.

November 19, 1930.—Bond sur appeal in $2000, with American Surety Company of New York surety and Decree approving same filed.

November 19, 1930.—Citation allowed and issued.

November 19, 1930.—Citation returned—service accepted and filed.

December 17, 1930.—Decree extending time for docketing case in U. S. Supreme Court filed.

December 24, 1930.—Assignments of error by Intervening plaintiffs filed.

December 24, 1930.—Petition for Reversal by Intervening plaintiffs filed.

December 24, 1930.—Petition for appeal by Intervening plaintiffs filed.

December 24, 1930.—Order of Court granting appeal filed.

December 24, 1930.—Citation allowed and issued.

December 26, 1930.—Citation returned: "service accepted" and filed.

December 30, 1930.—Decree enlarging time in which to file record with Clerk of Supreme Court of United States to January 10, 1931, filed.

January 6, 1931.—Copy of notice of appeal to United States Supreme Court of United States forwarded to Attorney General of the State of Pennsylvania, filed.

January 7, 1931.—Order consolidating this cause with Nos. 5789 and 5791 for purpose of trial, filed

January 7, 1931.—Statement of evidence in Narrative form, Stipulation of Counsel, and Order approving same filed.

January 7, 1931.—Petition for Cross-Appeal by Respondents filed.

January 7, 1931.—Assignment of Error on Cross-Appeal, filed.

January 7, 1931.—Order allowing Cross-Appeal, filed.

[fol. 6] January 7, 1931.—Citation on Cross-Appeal allowed and issued.

January 7, 1931.—Citation returned "service accepted" and filed.

January 7, 1931.—Copy of Notice to Attorney General of Pennsylvania of Cross-Appeal, and proof of service, filed.

January 7, 1931.—Præcipe for Transcript of Record sur Appeals, filed.

[fols. 7 & 8] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

AMENDED PETITION—Filed Feb. 14, 1930

1. The petitioner above named brings this its petition against the defendants above named, for the purpose of enjoining, setting aside and annulling as hereinafter prayed, an order entered by the Interstate Commerce Commission hereinafter called the Commission, by Division 3 thereof, on the 28th day of December, 1929, in a proceeding then pending before the Commission, namely, Interstate Commerce Commission Docket No. 20968, which was instituted by a complaint in which James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal [fol. 9] Warehouse Company were complainants, The

Pennsylvania Railroad Company was defendant, and your petitioner was an intervenor.

2. Petitioner is a corporation duly organized and existing under the laws of Pennsylvania. It is engaged in the business of operating warehouses. Its principal office and all of its warehouses are in the City of Philadelphia in the said Eastern District of Pennsylvania.

3. United States of America is a necessary party defendant in a proceeding to enjoin, set aside and annul an order of the Interstate Commerce Commission under the provisions of the District Court Jurisdiction Act, approved October 22, 1913, (38 Stat. L., 219), U. S. Code, Title 28, Section 41, Sub Division 28, Sections 43 to 48. This suit is brought under the provisions of said act and also under the general equity jurisdiction of this Court.

4. The Interstate Commerce Commission in an administrative tribunal created by the Interstate Commerce Act, approved February 4, 1887, (24 Stat. L., 379), as amended, including amendments to said Act contained in the Transportation Act of 1920, approved February 28, 1920 (41 Stat. L., 456), under which said acts it assumed to proceed in rendering its said order on December 28, 1929, in the proceeding aforesaid.

5. Under its tariffs duly on file with the Interstate Commerce Commission, the Pennsylvania Railroad Company (hereinafter termed the Pennsylvania) undertakes to load and unload freight consigned from and to the City of Philadelphia at certain stations designated in the tariffs afore- [fol. 10] said at Philadelphia. Included among the stations so designated by the Pennsylvania in its tariffs are eleven stations owned and operated by the Pennsylvania where this service is performed by employees of the Pennsylvania, five stations owned by the Pennsylvania and operated by your petitioner where this service is performed by the petitioner, and seven stations, owned and operated by the petitioner where this service is performed by the petitioner.

6. In and by its said tariffs aforesaid, the Pennsylvania undertakes to load and unload carload package freight at the terminal stations in the City of Philadelphia referred to in paragraph 5 and to perform certain other services inci-

dent to the transportation of carload package freight at said designated terminal stations. In and by said tariffs, forty-eight hours free storage is allowed by the Pennsylvania to consignees after the arrival of carload freight at any one of the designated stations and the Pennsylvania is obliged by the provisions of its said tariffs and as a part of its transportation duties under the Interstate Commerce Act to store and protect such carload freight during said period of free time.

7. The petitioner and the Pennsylvania Railroad have entered into a series of agreements covering the operations above mentioned. Five of these are leases of the property owned by the Pennsylvania Railroad to the petitioner as well as contracts under which the stations are operated. All of them provide that the petitioner shall perform certain services for the Pennsylvania Railroad Company, notably:

(a) To accord to traffic passing over the lines of the Pennsylvania Railroad system, preference in the facilities [fol. 11] furnished by the petitioner over traffic passing over other lines.

(b) To load and unload and handle freight received by the petitioner to be shipped over the lines of the Railroad Company or received by the petitioner from the Railroad Company for delivery to consignees. In the case of incoming freight, petitioner is also to notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of freight and other charges upon inbound freight. The Warehouse Company has furnished a bond, conditioned for the prompt payment of the said charges.

(d) To indemnify and hold harmless the Railroad Company from all damage to or loss of freight in the custody or control of the petitioner and to maintain fire insurance on all such freight, adequate to cover the Railroad's liability.

(e) To notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as petitioner holds the freight for account of the Railroad

Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To indemnify the Railroad Company against liability on account of any acts or omissions of the petitioner and on account of receipts for merchandise issued by petitioner.

(g) To keep the Warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

[fol. 12] 8. To pay the petitioner for all the services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the petitioner's Warehouse as hereinbefore set forth, the Railroad Company agrees to pay various sums therein set out, the amounts varying according to the commodity handled and the quantity handled.

9. Included in the services of loading, unloading and "handling" freight for the Pennsylvania under its contracts, the petitioner renders as agent of the Pennsylvania Railroad a variety of terminal services incident to the transportation duties of the Pennsylvania Railroad as a common carrier, such as: removing and recording the seals from car doors and preserving the record thereof; examining the merchandise in the car and noting the damage and cause for same; prompt inspection of equipment; prompt loading and unloading to minimize the delay to the equipment; storing the shipment for forty-eight hours including its protection against fire and by insurance; taking up the bills of lading and canceling the same; delivering the merchandise to the consignee and taking the receipt therefor; handling claims for damage and disposal of refused merchandise; executing bills of lading for outbound shipments; tallying the contents of the car and placing seals on same.

10. All of said services covered by the said contracts and rendered by the petitioner are transportation services as defined by Section 1 of the Interstate Commerce Act, and as to all of them, the Pennsylvania Railroad is under legal obligation to perform them or cause them to be performed, [fol. 13] and the payment and consideration provided in

said contracts, are made for the performance by the petitioner of said transportation services as the duly designated agent of the Pennsylvania. No payment of any kind, direct or indirect, is made by the Pennsylvania to the petitioner except the payments for the said transportation services.

11. The petitioner has performed its obligations under said contracts with care and fidelity and to the satisfaction of the Pennsylvania Railroad Company and of the public. It has received as payment for its services under the said contracts upwards of $200,000 annually.

12. By complaint dated April 26, 1928, James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company, brought the complaint before the Interstate Commerce Commission above referred to, which complaint was docketed by the Commission as Docket #20968. It avers that the complainants own and operate warehouses in Philadelphia in competition with your petitioner, that both complainants and your petitioner were shippers within the meaning of the Interstate Commerce Act and that the Pennsylvania Railroad, in the form of traffic allowances, was refunding to the petitioner part of the published rates and thereby was collecting from the petitioner a less compensation than it collected, and was collecting from the complainant for rendering like and contemporaneous services under substantially similar circumstances and conditions in violation of Sections 2 and 3 of the Interstate Commerce Act. At the same time Walter A. Bailey, and others complained of similar payments made to other Warehouse Companies by the Baltimore and Ohio [fol. 14] Railroad Company, and Rex and Company, Inc., and others complained of similar payments made to other Warehouse Companies by the Reading Company. The said complaints were docketed by the Interstate Commerce Commission as Docket No. 20968 Sub #1, and 20968, Sub #2, respectively.

13. Thereafter the Pennsylvania answered denying the charges of violation of the Interstate Commerce Act. Your petitioner petitioned the Interstate Commerce Commission for leave to intervene. The Commercial Exchange of Phila.

delphia, The Grocers and Importers Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Inc., also petitioned the Commission for leave to intervene in the case averring that the arrangements complained of had been in effect for many years, and had added greatly to economy, convenience and expedition in the handling of freight and that interference with the arrangement would be greatly prejudicial to the business interests of Philadelphia. Said petitions were granted by the Commission.

14. Thereafter the Commission consolidated the three cases above named and set them all for hearing before an Examiner of the Commission on July 30, 1928. On the said date and subsequent dates, the complainants, the defendants, and the intervenors presented testimony before the said Examiner. A copy of the transcript of said testimony, the exhibits (including the contracts between the petitioner and the Pennsylvania Railroad), the complaint, the answer, the petitions of intervenors and the order of the Commission therein, will be offered in evidence at the hearing of this petition.

[fol. 15] 15. Thereafter, to wit, on December 28, 1929, the Division Three of the Commission (who, under the Interstate Commerce Act, as amended, are empowered to act in behalf of the Commission) acting by Commissioners Aitchison and Porter, filed a report and order in the matter. One report and one order was made to cover all three complaints. A copy of said report and order is attached hereto and made a part hereof.

16. By the said order which was to become effective on February 10, 1930, (and by subsequent action was, upon the petition of your petitioner, postponed until February 25, 1930), the Pennsylvania Railroad is required to cease, desist and abstain from making the payments to your petitioner which it has contracted to make and is required to cancel its tariff provisions which make the warehouses of petitioner a part of the Pennsylvania's station facilities at Philadelphia.

17. Thereafter your petitioner petitioned for a rehearing or reargument before the full Commission. Said peti-

tion was denied by the Commission on February 10, 1930. With the denial of the said petition, Petitioner's remedies before the Interstate Commerce Commission were exhausted.

18. Petitioner charges and avers:

(a) The Commission's order in the premises aforesaid is invalid and of no legal force or authority, and therefore the same should be declared to be null, void, and of no effect.

(b) As appears from the proceedings of the Commission, as set forth in its report, said order proceeds upon the conclusion of the Commission that petitioner is to be deemed the consignor of shipments from and consignee of ship- [fol. 16] ments to its warehouses. The said conclusion on the part of the Commission is not substantiated by any evidence produced before it, but is contrary to and inconsistent with all the evidence adduced in said proceedings and is inconsistent with recognized principles of law defining and creating the relations of shipper, consignor and consignee with a common carrier. In fact and in law the petitioner is not in any legal sense within the meaning and intent of the Interstate Commerce Act or otherwise, a shipper, consignor, or consignee in respect to any of the property with regard to which it receives a payment from the Pennsylania Railroad Company.

(c) As appears from the said report, the order proceeds upon the conclusion that the facilities of petitioner's warehouses were only nominally opened to the general public as Railroad freight stations and were not, in fact, public stations in that they were confined to the handling of merchandise for the patrons of the Warehouses; whereas the evidence shows that some of the warehouses operated by the petitioner are the property of the carrier, are recognized public stations opened to the general public and that all of such warehouses are and have been for many years actually used by the public. The Commission proceeds upon the erroneous legal proposition that a warehouse by tariff publication open to all of the public and actually used by such portion of the public as are patrons of the warehouse, is not in true contemplation of law, a public station.

(d) As appears from the report of the Commission said order proceeds upon the conclusion of the Commission that the services performed by the petitioner in connection with the loading and unloading of freight are, in fact, performed for the benefit of the owners of the merchandise rather than for the Railroad. The undisputed evidence shows that the Railroad Company undertakes by its tariff [fol. 17] to load and unload the freight and the said service is therefore not "performed for the benefit of the owners of the merchandise" in any other sense than all transportation services benefit the owners of the merchandise. The said order proceeds upon the erroneous proposition of law that the Railroad Company cannot pay its agent for rendering a transportation service if that service is performed for the benefit of the owners of the freight.

(e) As appears from the report of the Commission said order proceeds upon the conclusion that the petitioner had been given dominion over the goods for transportation purposes and accordingly for transportation purposes it should be deemed the consignor of shipments from or the consignee of shipments to its warehouses. The undisputed evidence shows that as to inbound freight petitioner is not "given dominion over" the goods by the owner thereof, but receives them from the Railroad Company in order that petitioner may perform the transportation service for which the Railroad Company had obligated itself. As to outbound goods, the evidence shows that the petitioner "is given dominion over" the goods by the owner thereof for warehousing purposes in some cases and for transportation purposes in others. That is to say, in some cases the goods are first delivered to the petitioner by the owner for warehousing purposes and not for transportation purposes, and for the rendition of such warehousing services the petitioner receives no compensation from the Railroad Company. In other cases the goods are delivered by the owner to the petitioner for loading onto cars, i. e., the petitioner is given domain over the goods for transportation purposes in the same way as the Railroad Company is given dominion over the goods when they are delivered at a station operated by the Railroad Company. For the rendition of this transportation service, the petitioner is paid by the Railroad [fol. 18] Company. The order is based upon the erroneous

proposition of law that petitioners may be "deemed" consignors or consignees of shipments as to which they are neither consignors nor consignees.

(f) As appears from the report of the Commission, said order proceeds upon the conclusion that the practice of the Railroad Company in making payments to the petitioner for loading or unloading package freight while refusing to make similar payments to the complainants resulted in unjust discrimination between the petitioner and the complainants, in undue preference to the petitioner, and in undue prejudice to the complainants. If petitioner and complainants were within the contemplation of Sections 2 and 3 of the Interstate Commerce Act and if such discrimination, preference or prejudice were undue and unjust, the same could be removed as a matter of law by giving allowances to both the petitioner and the complainants. The order of the Commission does not permit such a method of removing the alleged unjust discrimination, undue preference and undue prejudice. The order is based upon the erroneous proposition of law that unjust discrimination, undue preference and undue prejudice, if they exist, cannot be removed by an order permitting the defendant to make to complainants payments similar to those made to petitioner.

(g) As appears from the report of the Commission, the said order proceeds upon the conclusion that the payments made to the petitioner are nothing more than a device or attempt to lend legality to the payment of rebates to the petitioner. A rebate is a deduction from the published rate which finds its way into the pocket of the consignor, consignee or owner of the freight. The undisputed evidence shows that petitioner is not the owner, consignor or consignee of the freight and that the consignor, consignee or owner of the freight in every instance pays the full published tariff rate, and receives no rebate or drawback [fol. 19] therefrom. The order is based upon the erroneous proposition of law that a payment made by a railroad to its agent for the rendition of a transportation service is the payment of a rebate to a shipper.

(h) The order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the

Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to interfere with the right of a carrier to employ exclusively a particular agent or agents to perform transportation service which the carrier is required to perform either under its tariff or by virtue of its common law or statutory duties and obligations.

(i) The said order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to supervise, control or regulate the designation by carriers of terminal stations or of the internal management of said stations, or of the payment of compensation for the internal management of said stations.

19. The said order of the Commission unless set aside and annulled by this Court will operate to deprive the petitioner of the enjoyment of its rights under its said contracts with the Pennsylvania, and will, in fact, completely destroy said contracts and all property rights of the petitioner therein. By force of said order, the Pennsylvania will be constrained by the Commission to nullify or break its said contracts with the petitioner or terminate them and your petitioner is informed and believes that the Pennsylvania acting under the compulsion and duress of said order, will be required to nullify and set aside its contracts with petitioner.

Petitioner therefore avers for the reasons aforesaid that the said order of the Commission is in violation of the Constitution of the United States and the amendments [fol. 20] thereto, for the reason that it will deprive the petitioner of its property without due process of law.

20. The practice of unloading the carload freight at Petitioner's warehouse and other contract warehouses in the City of Philadelphia at the cost of the carriers has been in effect in Philadelphia for many years, in some cases, as long as forty years. During that time the trade has accustomed itself to that practice and merchants have made arrangements with their purchasers, sellers and principals, based on the continuance thereof. The prohibition of the continuance of that practice during the period when the

legality of the Commission's order is under consideration by the Court would throw the entire trade into confusion and would cause irreparable damage to your petitioners as well as to the mercantile interests of Philadelphia generally.

21. If a temporary stay or suspension, or interlocutory injunction or restraining order pending a final decree in this case is not granted, the Pennsylvania will amend its published tariffs on file with the Commission, so as no longer to undertake to unload carload package freight at the stations and warehouses operated by petitioner, and so as no longer to provide for the payment of compensation to petitioner and it will cease to pay to the petitioner the compensation provided for in the contracts above mentioned. Petitioner will thereupon be under the compulsion of making changes in the schedule of charges which it must collect from its customers and otherwise disturb and amend its established practices in conducting its warehouse business as aforesaid which changes in business methods will [fol. 21] tend to disrupt the business of petitioner in a manner that cannot be compensated for in damages if and when the Courts shall decide upon a final hearing that the order of the Interstate Commerce Commission is invalid.

Therefore petitioner prays:

1. That upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge in accordance with the Act of Congress approved October 22, 1913, 38 Statutes 220 U. S. Code Title 28, Section 47.

2. That after no less than three days' notice to the Interstate Commerce Commission, and the Attorney General of the United States, there be ordered and granted by the Court a temporary stay or suspension of the operation of the order of the Commission entered December 28, 1929, in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company, vs. Pennsylvania Railroad Docket #20968, for sixty days from the date of the said order, as provided in Section 47 of Title 28 of the United States Code.

3. That upon not less than five days' notice, to the Interstate Commerce Commission, to the Attorney General of the United States, and to the Defendant Pennsylvania Railroad Company, an interlocutory injunction be issued suspending or restraining the enforcement, operation or execution of the said order until the further order of this Court.

4. That upon final hearing, this Court adjudge, order and decree that said order of the Interstate Commerce Commission dated December 28, 1929, is null and void and without warrant in law and that the same be set aside [fols. 22-37] and annulled and that the United States of America and the Interstate Commerce Commission, and each of them be perpetually restrained and enjoined from enforcing said order.

5. That your petitioner may have such other and further relief as to equity may appertain and as may be deemed by this Honorable Court fit and proper.

Merchants Warehouse Company, by George M. Richardson, Treasurer and General Manager. Allen S. Olmsted, 2nd, William A. Glasgow, Jr., M. Hampton Todd, Solicitors for Petitioner.

Duly sworn to by George M. Richardson. Jurat omitted in printing.

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

DECREE, AS AMENDED, FIXING TIME FOR HEARING, ETC.—Filed Feb. 17, 1930

Whereas it appears that this is a proceeding for a final decree to set aside and annul an order of the Interstate Commerce Commission, made in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company, complainants, against the Pennsylvania Railroad Company, defendant, Interstate Commerce Commission Docket No. 20968, entered on the 28th day of December, 1929, to become effective

on the 10th day of February, 1930, which effective date, by a subsequent order of the said Commission, was postponed until the 25th day of February, 1930.

And whereas it appears that the petitioner herein asks for a temporary stay or suspension of the operation of the order of the said Commission.

And whereas it further appears that under the provisions of the United States Code, Title 28, Section 47, the hearing in this Court is directed to be before a Court consisting of three Judges, one of whom shall be a Circuit Judge.

Now, therefore, it is ordered this 17th day of February, 1930, by the District Court of the United States for the [fol. 39] Eastern District of Pennsylvania, that the following Judges be called to my assistance to hear and determine the said application, to wit: United States Circuit Judge Victor B. Wooley and United States District Judge Oliver B. Dickinson.

It is further ordered that the application for a temporary stay be set for hearing before said Court on the — day of February, 1930, at 10 o'clock, at Philadelphia.

It is further ordered that immediate notice of the said hearing be given by the petitioner to the Interstate Commerce Commission and to the Attorney General of the United States by telegraph and by registered mail or by personal delivery.

(S.) J. W. Thompson, United States District Judge.

[fol. 40] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Feb. 21, 1930

To the Honorable the Judges of said Court:

The petition of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company, shows unto this Court as follows:

Your petitioner James Gallagher is an individual, trading and doing business under the name and style "Gallagher's Warehouses"; your petitioner Walter A. Bailey is an in-

dividual, trading and doing business under the name and style "Bailey Warehouses"; and your petitioners Northeastern Warehouse Company and Terminal Warehouse Company are corporations duly organized and existing under the laws of the Commonwealth of Pennsylvania; each of your petitioners having its principal place of business in the City of Philadelphia, Pennsylvania. The above entitled proceeding grew out of the complaint in which James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company were complainants, The Pennsylvania Railroad Company was defendant, and The Merchants Warehouse Company was intervener, before the Interstate Commerce Commission, Docket No. 20968, and as a result of the hearing of the said complaint an order was passed by the Interstate Commerce Commission, a copy of which is attached to the petition of The Merchants Warehouse Company in this proceeding; that [fol. 41] this proceeding is brought by The Merchants Warehouse Company to set aside the said order of the Interstate Commerce Commission; that your petitioners are deeply interested in and affected by the said order of the Interstate Commerce Commission; that it is necessary for the protection of the interests and rights of your petitioners that your petitioners be made parties to this proceeding.

Your petitioners desire to intervene in this proceeding as parties defendant for the purpose of being heard and protecting their rights.

Wherefore your petitioners pray that an order may be passed by this Honorable Court permitting your petitioners to intervene as parties defendant in the above-entitled proceeding.

James Gallagher, by James Gallagher, Jr. Northeastern Warehouse Company, by Blair R. Miller, Supt. Walter A. Bailey, by Walter A. Bailey. Terminal Warehouse Company, by Ernest V. D. Sullivan, Pres. John J. Hickey, Solicitor for the Petitioners. Theodore L. Reimel, Local Counsel.

[fol. 42] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

Before Woolley, C. J., Thompson & Dickinson, D. J.

ORDER GRANTING LEAVE TO INTERVENE—Filed Feb. 21, 1930.

On the foregoing petition it is on this 21st day of February, 1930, by the District Court of the United States for the Eastern District of Pennsylvania, ordered:

That James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company be permitted to intervene in the proceedings of the above-entitled case as parties defendant for the purpose of being heard and protecting their rights.

By the Court.

Attest:

(S.) Theodore L. Cobaugh, Deputy Clerk.

[fol. 43] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

ORDER ALLOWING A TEMPORARY STAY OF THE OPERATION OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed Feb. 21, 1930.

Whereas, by petition filed February 14, 1930, the Petitioner, the Merchants Warehouse Company, prays the District Court to call to its assistance two other Judges, one of whom shall be a Circuit Judge, in accordance with Title 28, Section 47, of the United States Code, and prays that this Court set aside and annul an order of the Interstate Commerce Commission entered in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company against the Pennsylvania Railroad Company, I. C. C. Docket #20968,

and also praying for a temporary stay or suspension of the operation of the said order.

And whereas, it appears that the said order of the Interstate Commerce Commission is to become effective Feb-
[fol. 44] ruary 25, 1930.

And whereas, on February 17, 1930, the Honorable J. Whitaker Thompson entered an order calling to his assistance United States Circuit Judge, Victor B. Woolley, and United States District Judge, Oliver B. Dickinson, to hear and determine the said application and setting the application for a temporary stay for hearing before the said special Court on February 21, 1930.

And whereas, it appears that notice of the said hearing was given by the petitioner to the Interstate Commerce Commission and to the Attorney General of the United States by telegraph and by registered mail on February 17, 1930.

And whereas, a hearing was held upon the said application for a temporary stay in the Court Rooms of the United States Circuit Court of Appeals at Philadelphia, on February 21st, 1930, before the said special Court, at which hearing divers witnesses in behalf of the petitioner were examined under oath.

Now therefore, this Court finds, based upon the evidence submitted to the Judges comprising the said special Court at the said hearing on February 21, 1930, that irreparable damage would ensue to the petitioner, the Merchants Warehouse Company, unless the operation of the said order is stayed or suspended in whole during the pendency of this petition before this Court.

And it is therefore ordered, adjudged and decreed that the said order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse [fol. 45] Company vs. Pennsylvania Railroad Company, I. C. C. Docket #20968, be stayed and suspended in whole for a period of sixty days from the date hereof.

It is further ordered, adjudged, and decreed that the said petition be set for final hearing before this special Court at Philadelphia in the Court Rooms of the Circuit

Court of Appeals for the third circuit on the Twenty-sixth day of March next at 10 A. M.

(S.) Victor B. Woolley, Circuit Judge. (S.) J. W. Thompson, District Judge. (S.) O. B. Dickinson, District Judge.

February 21, 1930.

Service accepted by J. Stanley Payne for Interstate Commerce Commission; by Elmer B. Collins for the United States of America.

[fol. 46] IN UNITED STATES DISTRICT COURT

In equity. No. 5781

[Title omitted]

ANSWER OF NORTHEASTERN WAREHOUSE COMPANY, JAMES GALLAGHER, WALTER A. BAILEY, AND TERMINAL WAREHOUSE COMPANY, INTERVENERS.—Filed Feb. 25, 1930.

I

Northeastern Warehouse Company, James Gallagher, Walter A. Bailey and Terminal Warehouse Company, interveners, for answer to the petition filed herein by The Merchants Warehouse Company, petitioner, say:

1. Answering paragraphs 1, 2, 3 and 4 of the petition said interveners admit, for the purposes of this suit, that the allegations in those four paragraphs are true, except that said interveners deny that this suit was instituted or may be maintained under the general equity jurisdiction of the District Court of the United States for the Eastern District of Pennsylvania.

2. Answering paragraphs 5, 6, 7, 8, 9, 10 and 11 of the petition, said interveners deny the truth of each and all of the allegations made in those seven paragraphs.

3. Answering paragraphs 12 and 13 of the petition, said interveners admit that the allegations made in those two paragraphs are true.

4. Answering paragraph 14, said interveners admit that the allegations in that paragraph are true with the exception that said interveners do not, and cannot admit that the petitioner will offer certain evidence at the hearing of the petition.

5. Answering paragraphs 15, 16 and 17 of the petition, [fol. 47] said interveners admit the truth of the allegations in those three paragraphs.

6. Answering paragraphs 18, 19, 20 and 21 of the petition, said interveners deny the truth of the allegations in those four paragraphs.

7. Further in answer to paragraphs 18 (b), 19 and 21 of the petition, it appears that the petitioner does not assert the rights of a shipper, rate payer or carrier that can be directly affected by the measure of freight rates or an order of the Interstate Commerce Commission directed to any matter arising under sections 2 or 3 of the Interstate Commerce Act. The petitioner seeks an adjudication of certain contracts and of a question relating to compensation for services alleged to have been performed by the petitioner for the Pennsylvania Railroad Company. This court, constituted by virtue of the Act of Congress, approved October 22, 1913, 38 Stat. 220, is without authority to pass on such questions as to contracts and compensation.

8. Further answering the petition, said interveners deny any and all allegations therein, other than those expressly admitted herein.

9. Further answering the petition, said interveners say that the Interstate Commerce Commission is fully empowered to make the order challenged in the petition; that said order is valid and is supported by substantial evidence, and that the petitioner has not shown that said order is invalid or is without substantial support of evidence.

Wherefore, having fully answered the petition, said interveners pray that the prayer of petitioner be denied and

that the petition be dismissed at the cost of the petitioner.

Northeastern Warehouse Company, James Gallagher, Walter A. Bailey, Terminal Warehouse Company, interveners. (S.) John J. Hickey, Solicitor for the Interveners, 800 Southern Building, Washington, D. C. (S.) Theodore L. Reimel, Local Counsel.

[fol. 48] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Mar. 6, 1930

The Interstate Commerce Commission, respondent in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, 3, and 4 of the petition, the Commission admits, for the purposes of this suit, that the allegations therein contained are true, except that the Commission denies the suit was commenced or may be maintained under the general equity jurisdiction of the District Court.

II

Answering paragraphs 5 to 21, both inclusive, of the peti-
[fol. 49] tion, the Commission admits, for the purposes of this suit, that the allegations contained in paragraphs 12, 13, 14, 15, 16, and 17 are true, and admits and alleges that it made the report and order dated December 28, 1929, in a proceeding then pending before it entitled James Gallagher, et al. v. Pennsylvania Railroad Company, Docket No. 20968, which proceeding also embraced No. 20968, Sub. No. 1, Walter A. Bailey, et al. v. Baltimore & Ohio Railroad Company, and No. 20968, Sub. No. 2, Rex & Company, Inc.,

et al. v. Reading Company, a copy of which report and order is attached to and made a part of the petition; that the Commission refers the court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based.

The Commission further alleges that at the hearings referred to in paragraph 14 of the petition, in connection with the subject matters covered by said report and order, the Commission accorded to all interested parties, including petitioner herein, a full and fair opportunity to be heard; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the petitioner herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said report and order, which included the Commission's findings [fol. 50] of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said report of December 28, 1929, were and are, and that each of them was and is fully supported and justified by the evidence submitted to the Commission in said proceedings as aforesaid.

The Commission further alleges that in making said report of December 28, 1929, it considered and weighed carefully in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel, including matters covered by the allegations of the petition herein.

The Commission further alleges that said order of December 28, 1929, was not made or entered either arbi-

trarily, or unjustly. or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it and the Commission denies each of and all the allegations to the contrary contained in the petition.

III.

Further answering paragraphs 18, 19, 20, and 21 of the petition, the Commission denies that said order of December 28, 1929, is either unlawful or void, for the reasons, or for any of the reasons, set forth in said paragraphs. The Commission particularly denies that the petitioner will suffer either irreparable damage or irreparable injury as alleged in paragraphs 19, 20, and 21 of the petition unless said order of December 28, 1929, is enjoined and set aside by the court.

[fol. 51] Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict with the allegations herein, or with either the statements or conclusions of fact included in said report and order of December 28, 1929, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by (S.) J. Stanley Payne, Assistant Chief Counsel. (S.) Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 52] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

PETITION OF COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' AND IMPORTERS' EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, PHILADELPHIA BOURSE, AND THE ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INCORPORATED, FOR LEAVE TO INTERVENE AND ORDER PERMITTING INTERVENTION—Filed Mar. 8, 1930

Now come the Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Incorporated and respectfully petitions the Court for leave to intervene in the above case in accordance with Section 212 of the Act approved October 22, 1913, 39 Stat. 219, U. S. Code, Title 28, Section 45a, and as reason therefore aver:

Petitioners were parties in interest to the proceeding before the commission, to wit: James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company, vs. Pennsylvania Railroad Company, I. C. C. Docket #20968, having been permitted to intervene by the Commission. They presented evidence before the Commission, appeared by counsel, filed briefs, and participated in the oral argument before the Commission. They are Corporations and Associations who are interested in the controversy or question before the Inter-

[fols. 53 & 54] state Commerce Commission.

Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Association of Manufacturers' Representatives, Incorporated, by (S.) Allen S. Olmsted, 2nd, Attorney.

Before Woolley, C. J., and Thompson and Dickinson, D. J.

Order

And now, to wit, this 21st day of February, upon motion of Allen S. Olmsted, 2nd, Esquire, the said Commercial Ex-

change of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and Association of Manufacturers' Representatives, Incorporated, are permitted to intervene in the above case as party plaintiffs with right to appear by counsel and present testimony.

By order of the Court.

Attest: (Sgd.) George Brodbeck, Clerk.

[fol. 55] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA—Filed Mar. 15, 1930

United States, one of the respondents in the above entitled case, for answer to the petition heretofore filed therein against it says:

I

United States admits for the purposes of this suit the matters and conclusions alleged in paragraphs 1, 2, 3 and 4 of the petition, except that it denies that the suit was commenced or can be maintained under the equity jurisdiction of this Court.

II

United States denies the truth of the allegations contained in paragraphs 5 and 6 of the petition, except this: It admits that the Pennsylvania Railroad Company (hereinafter termed the Pennsylvania) has on file with the Interstate Commerce Commission certain tariffs which provide that "allowances" will be paid to petitioner on carload package freight "handled through" petitioner's warehouses.

III

Answering paragraphs 7 to 9, both inclusive, of the peti-
[fol. 56] tion, United States admits that petitioner and

the Pennsylvania have entered into the agreements mentioned in said paragraph 7, and that said agreements contain the provisions, in substance, set forth in said paragraphs 7 and 8; but United States particularly denies that the alleged "services" described in said paragraphs are performed by petitioner for the Pennsylvania; and alleges that said services are performed by petitioner in the conduct and as part of its own private merchandise warehouse business; and further alleges that they are not services for which the Pennsylvania may lawfully pay allowances to petitioner, and for which petitioner may lawfully receive allowances from the Pennsylvania.

IV

United States denies the allegations contained in paragraph 10 of the petition.

V

Answering paragraph 11 of the petition, United States admits that petitioner has received large sums of money annually from the Pennsylvania purporting to be "allowances" out of freight rates for services performed by petitioner; but denies that petitioner performed said services for the Pennsylvania; and alleges that said services are not those for which said sums, or any other sum, may lawfully be paid by the Pennsylvania to, or lawfully received by petitioner from the Pennsylvania.

VI

United States admits for the purposes of this suit the allegations of paragraphs 12 to 17, both inclusive, of the petition.

VII

Answering paragraphs 18 to 21, both inclusive, of the petition, United States denies that the order of the Inter- [fol. 57] state Commerce Commission is invalid, of no legal force or authority, null, void, or in violation of the Constitution of the United States for the reasons set forth and alleged in said paragraphs, or for any other reasons; and

particularly denies that petitioner will suffer irreparable damage or other legal injury if said order is not temporarily stayed, suspended or restrained.

VIII

Further and affirmatively answering the allegations of the petition, United States alleges that said Commission was fully empowered by the Interstate Commerce Act to make said order; that said order is valid, and is fully supported by substantial evidence duly submitted by the parties to the proceeding then pending before the Commission and in which it entered said order; and United States denies each and every allegation to the contrary contained in the petition.

IX

Except as herein expressly admitted, United States denies the truth of each and every allegation contained in the petition.

Wherefore, having fully answered, United States prays that the relief sought be denied and the petition dismissed with costs to petitioner, and for the benefit of such other orders or decrees as the Court may deem just and proper in the premises.

(S.) Elmer B. Collins, Special Assistant to the Attorney General. (S.) John Lord O'Brian, Assistant to the Attorney General. (S.) Calvin S. Boyer, United States Attorney.

[fol. 58] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 59] In United States District Court

No. 5781

[Title omitted]

Order Substituting Trial Judge

And now, to wit, March 26th, 1930, it is ordered that the Order of February 17, 1930, in the above matter, be

amended by substituting the name of Honorable Joseph Buffington in place and stead of Honorable Victor B. Woolley as therein contained.

By the Court:

(S.) J. W. Thompson, J.

[fol. 60] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

ORDER CONTINUING THE TEMPORARY STAY OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed Apr. 15, 1930

Whereas, by petition filed February 14, 1930, the Petitioner, The Merchants Warehouse Company, prayed this Court to set aside and annul an order of the Interstate Commerce Commission entered in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company against the Pennsylvania Railroad Company, I. C. C. Docket #20968, and also praying for a temporary stay or suspension of the operation of the said order.

And whereas, this Court on February 21, 1930, entered an order staying and suspending the order of the Interstate Commerce Commission for a period of sixty days from that date.

And whereas, a final hearing before this Court was held at Philadelphia, on March 26, 1930.

[fols. 61 & 62] And whereas, it appears that irreparable damage would ensue to the petitioner, The Merchants Warehouse Company, if the said order of the Interstate Commerce Commission went into effect during the pendency of this litigation.

Now therefore, this Court finds, based upon the evidence submitted to it that irreparable damage would ensue to the petitioner, The Merchants Warehouse Company, unless the operation of the said order is stayed or suspended during the pendency of this litigation.

It is therefore ordered, adjudged and decreed that the said order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company vs. Pennsylvania Railroad Company, I. C. C. Docket #20968, be and hereby is stayed and suspended until the further order of this Court.

(S) Joseph Buffington, Circuit Judge. (S) J. W. Thompson, District Judge. (S) O. B. Dickinson, District Judge.

Filed April 15, 1930.

[fol. 63] In United States District Court for the Eastern District of Pennsylvania

In Equity

No. 5781. No. 5789. No. 5791

Merchants Warehouse Company et al.

v.

United States and Interstate Commerce Commission

Before Buffington, Circuit Judge, and Thompson and Dickinson, District Judges

Opinion of the Court—Filed Oct. 8, 1930

Thompson, District Judge:

The Merchants Warehouse Company, the Pennsylvania Warehousing and Safe Deposit Company, and the Philadelphia Warehousing and Cold Storage Company filed bills in equity praying for an order and decree to annul and set aside an order of the Interstate Commerce Commission entered on December 28, 1929. The order of the Commis-
[fol. 64] sion was promulgated in three cases, which were consolidated, heard together, and decided in the report of the Commission, entitled Gallagher et al. v. Pennsylvania Railroad Company, 160 I. C. C. 563.

The complaints before the Commission charged that certain allowances paid to the plaintiff warehouse companies by the Pennsylvania Railroad Company, the Reading Company, and the Baltimore and Ohio Railroad Company, defendants before the Commission, subjected the complainant warehouse companies to unjust discrimination, undue prejudice and disadvantage, and unduly preferred and advantaged the plaintiff warehouses, with which the complainants were competitors as warehousemen, in violation of Sections 2 and 3 of the Interstate Commerce Act.

The plaintiff warehouses and the complainants before the Commission, who are intervening defendants in this proceeding, operate at Philadelphia warehouses, at and from which they ship and receive, load, unload, store, distribute, and deliver in small quantities carload lots of merchandise, known as "package freight," carried or to be carried at carload rates, which they have previously solicited for such handling from their customers located generally in cities outside of Pennsylvania. For those services they collect from their customers certain warehouse rates and charges.

The business in which the warehouses with which we are concerned are engaged, is thus described in the Commission's report:

"In all the larger cities, including Philadelphia, public warehouses are customarily used for the receipt, storage, and distribution of merchandise. That these warehouses perform an important public service is undisputed. The merchandise warehouse receives goods in carloads and [fol. 65] distributes them in smaller quantities to local jobbers or retailers, or re-ships them in less-than-carload lots to near-by destinations; issues negotiable and non-negotiable receipts, provides insurance, and allows credit to be obtained on merchandise stored; provides recoopering, marking, and separation of varieties, and various incidental clerical services. Warehouse services enable manufacturers to keep spot stocks for their customers; equalize production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space; reduce freight charges and save time in transit through handling goods in carload quantities; reduce fire risk and loss and damage claims; and eliminate the necessity of providing storage space at point of origin. Both complainants and the contract warehouses furnish these services."

The plaintiffs in the instant case operate, in competition with the interveners, who were complainants before the Commission, the same type of warehouses and render the same kind of services generally as the intervenors, for which charges are collected from their customers. The carriers, the Pennsylvania Railroad Company, the Baltimore and Ohio Railroad Company, and the Reading Company, pay to the plaintiffs, in connection with the loading, unloading, and "handling" by them of such merchandise, certain sums, ranging from 30c to 50c per ton, but make no such payments to the warehouses which were complainants before the Commission. No payments are made if the shipments are unloaded within the forty-eight hours free time. The Pennsylvania Railroad Company pays the allowances in question to the Merchants Warehouse Company, the Baltimore and Ohio to the Pennsylvania Warehousing and Safe Deposit Company, and the Reading Company to the [fol. 66] Philadelphia Warehousing and Cold Storage Company, the plaintiffs here. Payments are also made by the Pennsylvania to the Quaker City Cold Storage Company and by the Reading to the Pennsylvania Warehousing and Safe Deposit Company. Neither of the latter warehouses have intervened in this proceeding.

In some instances, the carriers own the land or warehouses which the plaintiffs hold under lease. In other instances, the carriers do not own the land or the warehouses.

In the report of the Commission, because of the fact that the payments, which are alleged to be preferential, discriminatory and prejudicial as against the intervening defendants, are made in accordance with contracts with the respective carriers of many years standing, the warehouse companies, which receive the allowances are designated as "contract warehouses".

The contracts provide that the warehouse shall accord to traffic passing over the lines of the carrier preference in facilities furnished by the warehouse over traffic passing over other lines; shall load or unload or handle freight received to be shipped over the lines of the carrier, or received by the warehouse from the carrier for delivery to consignees; shall notify the consignees of the arrival of incoming freight; shall be responsible for the prompt collection of freight charges and other charges upon in-bound freight; shall indemnify and hold harmless the carrier for

all damage to and all loss of freight in the custody of the warehouse; shall maintain fire insurance; shall notify the carrier of the failure of consignees to receive freight; shall comply with directions with respect thereto received from the carrier; shall indemnify the carrier against liability on [fol. 67] account of any of the warehouses' acts of omission and on account of bills for merchandise issued by the warehouse. For those services the carriers agree to make payments to the contract warehouses as provided in the contracts.

The terminal services of the contract warehouses include the removing and recording of the seals from the cars placed for unloading, placing seals on loaded cars and preserving the record thereof, examining the merchandise, noting the damage and the cause thereof, the prompt inspection of the equipment, prompt loading and unloading to minimize delay, storing and shipment for the forty-eight hours free time, including protection against fire through insurance, taking up bills of lading and canceling the same, delivering the merchandise to the consignee and taking receipts therefor, handling claims for damage, disposal of refused merchandise, executing bills of lading for outbound shipments, tallying the contents of the cars.

The record thoroughly establishes the fact that the contract warehouses and the intervening warehouses are engaged in the same kind of business, and each ships and receives at its warehouses package freight of all kinds destined to or shipped from various points in the United States over the railroads, and that the circumstances and conditions surrounding handling and movement of the traffic are similar if not identical. It is further shown by the record that the services which the contract warehouses perform, for which the contract provide for the payment of compensation by the carrier to them, are performed, for their patrons, by the intervening defendants who were complainants before the Commission; that the latter load and unload the freight for their patrons, pay and collect freight [fol. 68] charges, send notices of arrival to their customers, check the contents of the cars, give the railroads reports, notify the railroads of damage to the freight, prepare bills of lading, mark and stencil packages, recooper and perform in general identical services for their patrons.

As to this, the Commission finds:

"The services performed by the contract warehouses do not differ in substance from those rendered by complainants. The warehouses of complainants and those of the contract warehouses are served by private side tracks or sidings connecting with the lines of one or more defendants. Both handle the same classes of freight and both obtain business by widespread advertising in prominent trade publications, by sending letters, pamphlets, and circulars to prospective customers offering them their services, and by personal solicitation. There is active and keen competition between complainants and the contract warehouses. Concerns using public warehouse facilities generally select the company offering them the lowest aggregate charge for the distribution of their goods. By means of the allowances the contract warehouses are able to quote lower charges than can complainants."

Evidence was introduced on behalf of the complainants before the Commission for the purpose of showing that all of the services performed by the contract warehouses, including the loading of freight into, and the unloading of freight from, railroad cars, are warehouse trade services which are performed by all merchandise warehouses under the terms of their contracts and arrangements with their patrons, the manufacturers and wholesalers, and not transportation services, and that the contract warehouses' [fol. 69] premises were not in fact public terminals of the carriers.

The Commission found from the evidence that:

"* * * the contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations, but are confined to the handling of merchandise for the patrons of the warehouses; and that the services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed

for the benefit of the owner of the merchandise rather than for defendants.

"While the contract warehouses are not the owners of the goods received or shipped by them, all of defendants' dealings are with these companies, and none with the owners of the goods. As to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to complainants, shipments from and to their warehouses being handled in substantially the same manner."

[fol. 70] The Commission concluded that:

"* * * the practice of defendants in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid and refusing to make similar allowances to complainants for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances."

The Commission accordingly entered its order of December 28, 1929, requiring the defendant railroads to cease, desist from, and abandon publishing or making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia, and requiring the Pennsylvania and the Baltimore and Ohio Railroads to cancel tariff provisions which had been published by them, making the contract warehouses a part of their station facilities at Philadelphia.

Although the railroads were defendants before the Interstate Commerce Commission, they did not intervene in the instant proceedings and took no part through counsel or otherwise at the hearing and argument of the case. We must assume, therefore, that they are satisfied with the order requiring them to desist from the payments and to cancel their tariff provisions, not only those under which the payments are made to the petitioners, but those in which the petitioners' warehouses are designated as public freight stations.

[fol. 71] The original contracts, which the Commission has declared discriminatory and prejudicial, had their origin when there was nothing unlawful in contracts or arrangements between interstate carriers and the shipping public in making such allowances or deductions out of freight rates as have since been denounced and made unlawful by existing law, so that the question before the court is not whether the system set up was ethically bad but whether it is condemned by the law as it now is.

It is insisted on the part of the plaintiffs that the findings and order of the Commission are not supported by substantial evidence. It is not, however, contended that the courts may put their judgment as to finding of fact based upon substantial evidence against that of the Commission. The court may not inquire into the expediency of the order, nor will it consider facts further than to determine whether there was sufficient evidence to support the order. Interstate Commerce Commission v. Union Pacific Railroad, 222 U. S. 541. Nashville Railway Company v. Tennessee, 262 U. S. 318. Assigned Car Cases, 274 U. S. 564. The courts will not inquire into the soundness of the reasoning whereby the Commission's conclusions are reached. Interstate Commerce Commission v. Illinois Central Railroad Company, 215 U. S. 452. Skinner and Eddy Corporation v. United States, 249 U. S. 557. These are matters left by Congress to the administrative tribunal appointed by law and informed by experience. Illinois Central Railroad Company v. Interstate Commerce Commission, 206 U. S. 441. Assigned Car Cases, supra. And whether a practice is unjustly discriminatory or preferential is a question of fact entrusted exclusively by the act to the Commission for de-

[fol. 72] termination upon the evidence in a particular case.

Interstate Commerce Commission v. Alabama Midland Railway Company, 168 U. S. 144. Nashville Railway v. Tennessee, supra.

The case is very similar to the case of Terminal Warehouse Company of Baltimore City v. United States et al., 31 F. (2d) 951, where the Terminal Warehouse Company of Baltimore had a contract or arrangement with the Pennsylvania Railroad Company substantially similar to the contracts involved here. In the proceeding before the Commission, the practice of the railroad in paying the Terminal Company allowances for the performance of terminal services in connection with the loading and unloading of package freight at Baltimore, was found by the Commission to result in an unjust discrimination as against the McCormick Warehouse Company, which was conducting a warehouse business in competition with the Terminal Warehouse Company. The bill of complaint was dismissed upon the ground that the finding by the Commission of discrimination and unreasonable preferences was sustained by the evidence before the Commission.

In discussing the contentions of the Terminal Warehouse Company, Judge Soper said:

"The contention of the Terminal Warehouse Company is that the Commission's order is wrong, because the Warehouse Company has been designated in the tariff as a public station of the carrier, and hence in this place the carrier is obliged, under the exception to rule 27, to load and unload carload freight, and may employ and pay the Terminal as its agent to do the work. But the conclusion to which the Commission came destroys the essential premise upon which this argument is based; for it found that the Terminal Warehouses, although nominally open to the general pub-
[fol. 73] lic, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to render some warehouse service. We are bound by this conclusion of fact, if it is supported by substantial evidence. Anchor Coal Co. v. U. S. (D. C.) 25 F. (2d) 462, 471. In our opinion, the evidence not merely supports, but requires, the conclusion which the Commission has reached. It is true that 20 per cent. of all carload package freight, shipped to Baltimore over the Pennsylvania, is handled by the Terminal Warehouse, and that any shipper, desiring

warehouse facilities, may send his goods to its platform. But these circumstances do not constitute the warehouse a public station. It is not used by shippers or consignees, who do not require or desire the services of the Terminal Warehouse Company, and either do not make use of any warehouse, or send their goods to other warehouses of a private or public character. The distinction between this situation and that in the case of U. S. v. Baltimore and Ohio Railroad, 231 U. S. 274, 34 S. Ct. 75, 58 L. Ed. 219, upon which the complainant relies, is obvious; for there the premises used by the carrier as a freight station, although furnished and operated by a nearby shipper, who used it to a greater extent than any other shipper, was nevertheless open to all shippers and actually used for the benefit of all alike."

It is contended on behalf of the plaintiffs, in discussing Judge Soper's consideration of the argument for the Terminal Warehouse Company, that, while the evidence in that case may have justified the finding of the Commission that the warehouses there in question were not railway terminal stations, the decision was based upon the undisputed evidence that no shippers or consignees, who were not cus- [fol. 74] tomers of the warehouse company, used the warehouse as a shipping or delivery station. It is argued that in the instant case there is not sufficient evidence to show that shippers generally do not use the contract warehouses as railroad freight terminals, and they point, as evidence to the contrary, to testimony before the Commission showing that, during one year, 744 carloads of freight were brought by team and loaded in carload lots at the Merchants Warehouse, which were not placed in storage. It is argued that the negative testimony was not sufficient to support the finding of fact by the Commission in the face of the testimony about the 744 carloads.

As to the first proposition, that the positive evidence was not sufficient to establish the fact, we think that there is enough substance in it to support the Commission's findings, in view of the rule stated above that the courts cannot put their judgment as to conclusions of fact against that of the Commission. As to the testimony contra, it is not shown anywhere, as to the 744 carloads, that any of the

shippers of those carloads of freight were not patrons of the warehouse company handling them, although it performed no storage services as to those particular shipments, and the railroad company did pay it for loading onto the cars, as agreed under the contract. Moreover, there is evidence, oral and documentary, (the latter through circulars, advertisements, and pamphlets, soliciting business as merchandise and distributing warehousemen) that the sidings of the contract warehouses, where the cars were "spotted" for loading or delivered for unloading were designated by them as their "private sidings".

It is further argued on behalf of the plaintiffs that the service of loading, unloading, assorting, storing, and de- [fol. 75] livering the carload shipments rendered by the plaintiffs for their patrons at their warehouses after the carriers had delivered the cars to them upon their warehouse sidings, is not a trade service but is a transportation service. As has already been stated, the services rendered by the intervening warehouses are in every substantial detail the same as those rendered by the contract warehouses.

It cannot be contended that the intervening warehouses render a transportation service. If, therefore, under identical facts and circumstances their service to their patrons is not a transportation service, how can that of the contract warehouses become so merely because the railroads agree to perform the loading and unloading at the contract warehouses, and designate their private sidings as railroad terminals?

The question as to whether or not they are transportation services is a question of fact and, if supported by substantial evidence, is conclusive upon the court. United States v. Erie Railroad Company, 280 U. S. 98. Assigned Car Cases, supra.

There is no evidence of record to show that the railroads exercise any control over the plaintiffs' warehouses or their business, except that shown by the contracts, under which it is contended for the plaintiffs that they are employees and agents of the railroad company for performing the duties of loading and unloading, which the railroads, it is claimed, are under an obligation to perform for shippers and consignees at their designated terminal stations. This obligation, if it is such, arises from the

fact that the Pennsylvania Railroad and the Baltimore and Ohio Railroad have made provision in their tariffs by which they take upon themselves the service to consignors [fol. 76] and consignees of loading and unloading carload package freight carried at railroad rates.

Rule 27 of the official Consolidated Freight Classification, to which the carriers are parties, provides as follows:

"Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings."

The Pennsylvania Railroad and the Baltimore and Ohio Railroad provide in their tariffs by exceptions to Rule 27 that they agree to load or unload carload package freight at certain Philadelphia freight stations, included among which are the contract warehouses. The Reading Company has no such tariff provisions, but also pays its contract warehouses for performing the work of loading and unloading carload package freight as agreed in the contracts.

The plaintiffs point to these tariff provisions as justification for the payments by the railroads, upon the ground that the railroads, having assumed the obligation to load and unload, which under Rule 27 above cited rests upon the consignors and consignees, have exercised their right to select their employees to do this work for them and to designate their own terminal stations as the place where the service is to be performed; that, having the tariff obligation, they may limit themselves to the selection of their employees and may lawfully select the plaintiffs as such without being guilty of any unlawful discrimination, preference, or prejudice.

It is well settled that a railroad carrier may exercise its own discretion in the selection of its agents and employees to perform any part of its transportation service and that [fol. 77] the mere granting of privileges, which are incidentally a part of the compensation for services rendered, is not unlawful as preferential or discriminatory as against others who are not thus selected. Del. L. & W. R. R. Co. v. Morristown, 276 U. S. 182. Donovan v. Pennsylvania Co., 199 U. S. 279. Great Northern Ry. Co. v. Minnesota, 238 U. S. 340. Express Cases, 117 U. S. 1. Chicago, St. L. &

N. O. R. R. Co. v. Pullman Car Co., 139 U. S. 79. Black and White Taxicab Co. v. Brown and Yellow Taxicab Co., 276 U. S. 518.

But there is substantial evidence to support the facts found by the Commission that the warehouses of the plaintiffs are not in fact open public freight stations of the railroads; that the service rendered by them under the contracts is a trade service and not a transportation service, in that it was rendered by the contract warehouses and by the intervenors, each for its patrons in precisely the same way; that thereby the plaintiffs are enabled to perform such service for their patrons for a lower charge than that for which the intervenors can perform the same service to their patrons.

It is clear that the payment of the allowances by the railroads under the contracts was not a consideration for employment in a transportation service.

Passing to the contention that the Commission was wrong in finding that the contract warehouses, even though not the owners of the goods, had been given dominion over such goods for transportation purposes and accordingly for transportation purposes should be deemed the consignors of shipments from or consignees of shipments to their warehouses, it is contended here, as it was in Terminal Warehouse v. United States, supra, that, inasmuch [fol. 78] as the Bills of Lading Act, 39 Stat. 545, Section 42, provides that, unless the context otherwise requires, "consignor" and "consignee" respectively mean the person named in the bill as the person from whom the goods have been received for shipment, or to whom the delivery of the goods is to be made, the contract warehouses cannot be deemed the consignors or consignees because the billing invariably names a consignor or consignee other than the warehouses.

It is well settled that the actual situation underlying a shipment rather than recitals in the shipping documents should control the application of the Acts of Congress. And while the billing in the instant case did not name the contract warehouses as consignors or consignees and the documents in consignments were made out "in care of" the warehouses, it is inconceivable that the mere wording of the shipping documents can justify a course of action

which would otherwise be contrary to law. Terminal Warehouse Co. v. United States, supra.

The Supreme Court has held that carriers may not lawfully discriminate for or against forwarders of goods. I. C. C. v. Del. L. & W. Railroad Company, 220 U. S. 235. United States v. Lehigh Valley R. R. Co., 222 Fed. 685. Lehigh Valley Railroad Co. v. United States, 243 U. S. 444. We follow the reasoning of Judge Soper in Terminal Warehouse Company v. United States, supra:

"Both the warehouse and the forwarder solicit and obtain the transportation of goods. The forwarder is concerned with the assembling of goods into carload lots at the point of shipment and the carriage of the same to one consignee, who may be the forwarding agent himself, and who receives the goods and distributes them to the parties for whom they are intended. The warehouseman is chiefly [fol. 79] concerned with the receipt and distribution of goods from the carrier after they have reached their destination. It is true that the forwarder is usually the consignor or the consignee of the goods, and it may be conceded arguendo that the warehouse company in this case is not. But both are closely related to the carriage of the goods and to the carrier, and both are entitled to the protection of the statute."

In our opinion, the Commission was right in finding that the actual business of the warehouses was not that of rendering service to the railroad companies in loading and unloading, and in storage for the account of the railroad companies, but that they were conducting a general warehousing business for their own patrons and that the payments made by the railroad companies under the guise of rendering service to them put the contract warehouse companies in the position of preference and advantage over the intervening warehouse companies which had the facilities and were engaged in business precisely similar to that of the plaintiffs; that by means of the payments the contract warehouses were enabled not only to obtain a preference and advantage for themselves over competing warehouses but also were enabled to perform for their patrons warehouse services and other services in connection with transportation at a less rate than could be ob-

tained for shippers who were patrons of the intervening warehouses.

We conclude that the payment of the allowances by the railroads under the contracts comes within the provisions of Section 2 of the Interstate Commerce Act, as amended by Section 404 of the Transportation Act of 1920, in that the contracts constitute devices whereby the carriers re- [fol. 80] ceive from the contract warehouses, through the deduction out of freight rates of the allowances, a less compensation for services rendered than they charge and receive from the intervening warehouses for doing a like service under substantially similar circumstances and conditions, and thereby subject the latter to unjust discrimination.

We further conclude that, under Section 3 of the above Act, the payment of the allowances gives an undue and unreasonable preference and advantage to the contract warehouses, and subjects the intervening warehouses to an undue and unreasonable prejudice and disadvantage.

Several trade and commercial organizations intervened on behalf of the plaintiffs, and at the argument and in their briefs they have reinforced the contentions of the plaintiffs and have predicted serious results to the commercial interests of Philadelphia in case the order of the Commission is allowed to stand. While these arguments ab inconvienti have had due consideration, we must determine the issues involved, unaffected by what the results may be, in accordance with the law as enacted. Such results as may flow from the order of the Commission are properly for the consideration of Congress and not the courts.

The bills are dismissed.

Dickinson, District Judge, concurs.

BUFFINGTON, C. J., dissenting:

This case concerns an order to desist issued by the Interstate Commerce Commission. There is no dispute about the facts. The only issue is one of law, namely the legal conclusion drawn from uncontradicted facts. Addressing myself to the latter and taking one renewal contract as [fol. 81] fairly illustrative of an agreed on practice beginning some forty years ago, I note that the Pennsylvania Railroad Company, hereafter called Railroad, and the Mer-

chants' Warehouse Company, hereafter called Warehouse, on January 25, 1917, contracted in writing, wherein the purpose of the parties was thus stated:

"Whereas the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouses of the said Warehouse Company situated on the plot of land bounded by Delaware Avenue, Walnut, Water and Chestnut Streets, in the City of Philadelphia, and State of Pennsylvania."

To carry out such purposes, railroad agreed to maintain tracks adjacent to warehouse, shift and deliver cars to warehouse "for the purpose of taking from and delivering to the same all freight to be shipped therefrom or delivered thereto." It further agreed to take and deliver such freight "at non-discriminatory rates and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia."

Railroad further agreed to pay warehouse "for all services rendered by it in and about the receipt and delivery of freight for account of the railroad company, both incoming and outgoing at the said warehouses," three and a half cents per barrel of flour up to fifty thousand barrels a month and two and a half cents over fifty thousand, and forty cents per ton of merchandise freight, etc. Railroad agreed not to go into storage business during the life of the contract, provided, however:

"that this covenant shall not be construed so as to prevent [fol. 82] the Railroad Company from warehousing freight in its terminals as an incident to delivery thereof or from entering into contracts for storage or other disposition of refused or unclaimed freight, nor shall it be so construed as to interfere with the performance by the Railroad Company of all obligations imposed upon it by law in respect to the carriage, storage or delivery of traffic."

On its part, warehouse agreed

"To indemnify and hold harmless the Railroad Company for all damages to, or loss of, freights in the custody or control of the Warehouse Company, and all liability by rea-

son thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor."

It agreed to collect and to be responsible for all freight on incoming shipments; to save the railroad harmless for damage to freight; to keep freight insured; to notify consignee of the arrival of goods; to notify railroad of non-removel of freight and "so long as it holds the said freight for account of the railroad company, to observe and comply with all directions with respect to such freight which may be received by it from the railroad company."

Warehouse further covenanted:

"To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouses, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it."

[fol. 83] It was mutually agreed that at "The expiration of the period during which the railroad shall currently allow freight to remain at his warehouse before delivery without charge" and freight has not been delivered to the consignee, such undelivered freight "shall be regarded and treated as stored with warehouse company by railroad for account of the owners thereof." The agreement ran for twenty years, with year to year continuance by consent and was non-assignable by warehouse. While it was in force, railroad was not to make any allowances to any other person or corporation for freight loading or unloading services to or from Philadelphia warehouses. The freight received and forwarded by these warehouses was for carload shipments and not for the non-carload freight which the railroad was equipped for and did handle at its own freight stations.

During the forty years such contracts have been in force, no shipper has complained either of the service afforded by the warehouse: of the use by the railroad of these ware-

houses as railroad forwarding or receiving stations; or that there has been in any way any discrimination in favor of other shippers, of any non-tariff rates exacted on freight or any rebate or allowance made or paid to other shippers. These contracts have been made with warehouses along their lines by all the three trunk lines that serve Philadelphia and there has been no complaint by them or any minor railroads that such contracts have diverted traffic from their lines. In point of fact, on delivery of freight to the merchandise company, such freight was dealt with in precisely the same way as though delivered at an ordinary freight station of the railroad and when incoming freight arrived at the warehouse, it was treated exactly as [fol. 84] the railroad would have done had it arrived at a regular station, namely kept free of charge for the customary free days and subjected to storage charges if kept longer. On its face these contracts seem fair and legal. They have been acted on for years. During the period the Government operated the railroad no change was made in practice and there was no suggestion of illegality sanctioned or participated in by the Government during its control. As we have said, no shipper is complaining. The railroads, which have taken no part in this controversy, have found the system helpful in the prompt handling and quick release of cars and substantially all of the public trade bodies of Philadelphia have intervened and urged its continuance.

Turning to the proofs from the trade bodies representing the commerce of Philadelphia, and taking the present warehouse as an example, it is clear that this system of handling the great flour distributing system of a metropolitan city was the gradual evolution of years of experience and that it was the outgrowth of the needs of a great food supply business itself, calling on the railroads to help it, and not a system forced on shippers by the railroad. Hubert J. Horan, President of the Commercial Exchange, was familiar with the whole development. His testimony was that up to 1883 and prior to the establishment of storage warehouses, carload lots of freight were brought down Market and other streets and delivered to the private warehouses which lined the streets. After the street tracks were taken up, the railroad built this Merchants' Ware-

house, controlling it itself, but giving the public free right to buy stock. In other cases of these contract warehouses the entire stock was privately owned and the railroads held none of the stocks. The reason for building them was to [fol. 85] avoid the time lost in tieing up unloaded cars. What was wanted was an expeditious release of cars and lessening the number of them coming to their own stations and standing unoccupied on the railroad's own sidings. Without entering into details, it suffices to quote from this well informed and practically experienced witness, who says:

"This here thing has been worked out on the basis of the economic method of handling flour, and I might say the profits in the flour business are at the minimum and always have been."

The basic connection of this flour system with the food supply of the City is testified to by him as follows, and there is no proof to the contrary:

"Q. Would it be possible to go back to the old method of handling the flour, which was in effect prior to 1887?

A. I do not see how it would be possible for a flour man today, when you take into consideration the tremendous growth of Philadelphia since, and that we have to make deliveries to almost every part of Philadelphia—now for West Philadelphia as an illustration, we use 31st and Chestnut; for Kensington we use the warehouse up there; downtown we use 15th and Carpenter, Front and Federal, or Central we use Front and Chestnut. To get warehouses we couldn't get railroad connections today, I don't believe, and to make an economical delivery for the benefit of the people—the consumer, it would be an impossibility, and the cost would grow to such tremendous figures that I don't know, we would all have to localize our business. In other words, we could not make distribution really economically over the city of Philadelphia today."

Moreover, his testimony shows the great necessity of handling flour in the most economic way, as the profit is [fol. 86] but fifteen cents a barrel and if the present system was abolished, "it would put an additional burden on the articles, of 50 cents a ton, or practically, on flour, of five

cents a barrel, and the problem then would arise as to our ability to transfer that burden to the consumer, and we would be in a position where it would be really a question of whether we could do it." He further testified his judgment was that the margin of the profit of the flour dealers was so small—fifteen cents a barrel—that if the present system were changed, Philadelphia dealers in freighted flour could not continue the flour business and it would be absorbed by the big local mills. The practical mind will at once see that while the extinction of five cents profit on a barrel of flour seems so small as to amount to nothing of moment, in reality that five cents cuts down the possible present profit of the flour business thirty-three and a third per cent., a proportion which in its aggregate is sufficient to destroy such business.

Moreover, it goes without saying that the instant discharge of carload freights made by the contract warehouses and the consequent return to service of the cars, instead of allowing such cars to congest on railroad sidings and await discharge by a consignee at the end of forty-eight hours, is a basic factor in prompt railroad freight service. In that regard the proof by an official of the Reading Railroad is:

"These contracts were made many years ago, and of course there is no one available who can state of their own knowledge as to the conditions that brought about these agreements, but from general information that can be obtained, the railroad companies at that time felt the need of additional facilities, where this carload package freight could be unloaded and taken care of, delivered, where additional facilities could be provided for storage and general [fol. 87] service that might be required by the commercial interests of Philadelphia. It was also a factor advantageous to the carriers in having the equipment promptly released, as would not be the case on team track deliveries, and that in my belief brought about these contracts with the warehousing concerns."

So also one of the Baltimore and Ohio R. R. officials says:

"As the contract shows, the original contract, it was made in 1897, at the time the Baltimore and Ohio Railroad

was in the hands of receivers. In fact the contract was made by the receivers. At that time the facilities of the Baltimore & Ohio Railroad were limited, and the receivers were quite anxious to increase the facilities here in some manner, shape or form, which would enable them to secure a much larger tonnage into and out of Philadelphia than had been handled."

The testimony of J. E. Sands, Terminal Freight Agent of the Baltimore and Ohio R. R., is:

"Well, in the operation of a freight station, it is an active going concern, and freight has to move currently, and any congestion—any surplus amount of freight on the facility naturally retards your operation. There is a certain amount of clearance that we really figure that we have to have for a smooth operation of a freight station, for we clear up daily, and if we were to attempt to handle excess freight, creating a congested condition, it would be a serious matter with us."

Seeing then that this contract warehouse system is shown to be a practice of forty years standing; that similar contracts were from time to time made by the Federal Court of this District through its receivers; that these contracts were acted upon by the Government during its oper-[fol. 88] ation of the railroad; that no shipper is complaining of any favoritism to competitors or burden imposed on him; that the large commercial bodies have felt the issue was of such vital importance to the Commerce of Philadelphia as to constrain them to intervene and oppose the unsettling of the tried-out practice of a generation, and that the only parties who complain are six warehouses, the gravamen of whose complaint is that they have not been made by the several railroads public freight stations; that the order of the Commission does these six warehouses no good in that it does not require the railroads to make these six warehouses public freight stations, but only compels the railroads to no longer make the twenty-four warehouses public freight stations for it, considering, we say, that such is the practical, commercial freight-handling situation before us, we next inquire whether the situation was an illegal one which called for the preventive power vested in

the Interstate Commerce Commission to put an end to it. There is no proof of any corrupt motive, vicious purpose, or concealed or purposed fraud. Everything has been done openly and above board. The railroads have not and are not taking part in the controversy. No shipper is complaining and, as a practical question, the case resolves itself into a business dispute between twenty-four contract warehouses and six non-contract ones, with the Interstate Commerce Commission taking the part of the latter. Does the case warrant the order that body has made in supposed relief of these six? We say supposed relief, for in point of fact the order gives no affirmative relief to the six and only stops the present practice of the twenty-four. Its anticipated effect is to lessen railroad efficiency. It deprives shippers of the benefit of freight loading and un-[fol. 89] loading at twenty-four convenient public freight stations and it puts an end to a business system which the twenty-four warehouses have carried on, in some cases, for nearly forty years, and that without complaint.

We here take occasion to say that there is no proof whatever that in any case any of these contract warehouses was the actual consignee of the inbound carload freight delivered by them or the outbound lots shipped by them. The few isolated instances where they received pay for handling their own shipments were evidently oversights and were in violation of the railroad's ordered tariff provision that "no payment will be made on any traffic consigned to or by the warehouse company." So far as outbound freight was concerned, the proof is they simply received the freight from the shipper and shipped it as was done by the railroad freight agent at any of its other freight stations. In doing so they performed no service for the shipper and they did not make the use of their warehousing facilities a condition precedent to the shipper using the station. So far as inbound carload freights were concerned, the shipper, in order to advise the railroad as to its particular destination, marked the car in care of such or such a contract warehouse. Far from designating or making the warehouse the consignee of his freight or authorizing the warehouse to receive the goods on his behalf and thereby discharge the railroad from liability, the shipper did nothing of the sort. On the contrary, the shipper retained his bill of lading and with the consequent right of stopping in transit, in no way surrendered or in any way qualified his

ownership of his property and in fact did nothing by marking it in care of the warehouse, other than simply to show that the warehouse which the railroad by its contract made [fol. 90] one of its freight stations was the particular railroad freight station to which he wished his goods to be forwarded. In point of fact, the sending it in care of the warehouse amounted to nothing more than if a shipper marked his freight "in care of John Doe, Pennsylvania, freight agent at Bryn Mawr, Pennsylvania." To our view, the finding of the Commission that this marking made the warehouse the consignee of the freight had not only no proof to support it and is not a finding of fact, but is a mere conclusion or inference for drawing which there was no warrant or foundation. And, to our view, the upholding of this theory of imaginary consigneeship of the freight would deprive consignors of freight of one of the most valuable rights a shipper has in surrendering the custody of his freight to a public carrier, namely constituting the carrier as his agent—with the consequent right of transit stoppage, until the carrier has terminated such agency by delivering such goods to the consignee designated by the consignor. Moreover, to so hold is to ignore the fact that the consignor has named the consignee and has mentioned the warehouse not as the consignee but as one in whose care the shipment is made. The bill of lading must be construed as a whole and every part given effect and to say the name of the designated consignee which is written into the bill of lading is to have no effect because the warehouse, which is not named as consignee, is to be "deemed" the consignee because of the words "In care of", etc., is to violate a basic rule of construction and to substitute fiction for fact.

Indeed, the holding of the Commission can hardy be deemed a finding of fact for it only is

"The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for [fol. 91] transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses."

Being merely a deduction, this Court is at liberty to draw its own deductions and base its decree on its own view (See 17 Fed. (2d) 22, and 18 Fed. (2d) 483, where it is said:

"When the fact is merely a deduction from other facts reported by him (Master) his conclusion is simply a result of reasoning of which the court is as competent to judge as he."

In point of fact, the warehouse is simply the railroad so far as the owner of the goods is concerned, for the uncontradicted proof is:

"We always receive the instructions, either from the carrier or from the owner of the merchandise. These instructions are received by messenger, by mail, by telegraph or by telephone, to be confirmed in writing."

Such conduct on the part of the warehouse was in compliance with the contract which, as we have quoted earlier, provided that the contract should not be so construed "as to interfere with the performance by the Railroad Company of all obligations imposed upon it by law in respect to the carriage, storage or delivery of traffic."

Moverover, the inference of the Commission that the warehouse "for transportation purposes should be deemed * * * consignee of shipments to its warehouses" is authoritatively negative by the Bills of Lading Act, 39 Stat. 545, Sec. 42, which provides "consignee" means the person named in the bill as the person to whom delivery [fol. 92] is to be made. It will also be noted that the present holding of the Commission that the warehouse has "been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed consignors and consignees," is at variance with the principle announced by its own holding in Smokeless v. Norfolk, 85 I. C. C. 395, which said: "The law seems to be well settled that the party to whom a shipment is consigned is the legal consignee, and not the party in whose care the goods are shipped." This reasonable and common sense view has the approval of text book authorities. See Hutchinson on Carriers, 3rd Edition, Vol. 2, page 755, where it is said:

"Goods shipped to one person as consignee in care of another should be delivered to the consignee, and, in case he cannot be found then to the one in whose care they are shipped."

It is obvious that a railroad by undertaking performance of transportation does not by performing such transportation duties become the consignee of the goods. And if such is the case, how does the hiring by the railroad of some one else to perform a part of the railroad's services make such minor performer the consignee where the same acts, if done by the railroad, would have no such effect.

Yet it is upon this false assumption of the warehouse being the consignee that this entire proceeding is bottomed. The Commission saw that the fact that the warehouse was the consignee was a prerequisite to their order and that unless such was the fact, the order here involved could not be sustained.

That the railroad may by contract constitute a warehouse a public freight station is as said by Supreme Court in United States v. Baltimore & Ohio Railroad, 231 U. S. 288, [fol. 93] "too clear for extended discussion."* If, then, such contract for substitution can legally be made, does it follow that because such a substitution is made with one warehouse and it is made a public freight station, that thereby the railroad has bound itself to establish as its

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*To the same effect is the case of the Terminal Warehouse v. U. S. 31 Fed. (2d.) 956, where Judge Soper says:

"The authorities do show, as the Commission held, that in certain cases it is proper for a shipper or forwarder of goods to be paid for transportation service rendered to a carrier. See Interstate Commerce Commission v. Diffenbaugh, supra, which was referred to in Lehigh Valley R. R. Co. v. United States, 243 U. S. 444, 37 S. Ct. 434, 61 L. Ed. 839, as being an authority which went to the verge of what is permitted by the Act to Regulate Commerce. It is also well settled that a carrier has full liberty to select its own agents to perform transportation service on its behalf, which it is under legal obligations to perform, and that it may employ one agent exclusively, and refuse to employ another. Covington Stock-Yards v. Keith, 139 U. S. 128, 11 S. Ct. 461, 35 L. Ed. 73; Express Cases, 117 U. S. 1, 6 S. Ct. 542, 628, 29 L. Ed. 791; Chicago etc., R. R. v. Pullman Southern Car Co., 139 U. S. 79, 11 S. Ct. 490, 35 L. Ed. 97; Donovan v. Pennsylvania Co., 199 U. S. 279, 26 S. Ct. 91, 50 L. Ed. 192."

additional public freight stations all other warehouses in that vicinity? We think not, for, as said in 276 U. S. 518, "The grant of privileges to respondent creates no duty on the part of the railroad company to grant like privileges to others and therefore there is no legal discrimination." Indeed it would seem the mere state-[fol. 94] ment of the proposition is its own answer. Now if the railroad can legally contract with one warehouse to make it a public freight station and if thereby it does not obligate itself to make every other warehouse a public station, it follows that in consideration of the designated warehouse agreeing to become a public station, the railroad may lawfully agree that it will not make any other warehouse a public station. For it will be observed that no warehouse has any general right to demand it be made a public freight station, but that it can be made such only when it and the railroad contract it shall be made such freight station.

Commenting on the freedom of railroads to control its passenger stations, the Supreme Court, in 276 U. S. 194, said "There was no duty upon the petitioner (the railroad) to accord to other taxicab men, the use of its lands simply because it had granted Walsh the privilege specified in its contract with him." And in another case involving a similar question, the Supreme Court, in the same volume, at page 529, said: "There is here no complaint by or on behalf of passengers; no lack of service, unreasonable exaction or inconvenience of the public is shown. It would be unwarranted and arbitrary to assume that this contract is contrary to public interest. The grant of privileges to respondent creates no duty on the part of the railroad company to give like privileges to others, and therefore there is no illegal discrimination." Now, if such contract as here involved be made, if there be no sinister purpose in making it, if its performance be an aid to the railroad in the movement of freights, if the public can avail themselves of this added facility, and the warehouse in good faith performs [fol. 95] the part of the railroad in receiving and forwarding for all shippers alike their carload shipments, it would seem that such contracts and performance under them constitute a valuable and desirable aid to the railroad in the performance of its duty to transport.

Moreover, as under the contract all the service the warehouse performs as a public freight station, to wit, loading or unloading the freight, and the money paid for such service is reasonable in amount, such payment may properly be made.

That the warehouses were not only designated by contract as public freight stations, that they were held out as such on tariff schedules, but, over and above all that they in good faith act as public stations for carload lots, is conclusively shown by the proofs which, for example in the case of the Merchants, are that from January 1, 1928, to September 30, it received as agent from trucks and teams and forwarded on its principal's railroad seven hundred and forty-four carload lots of outbound freight. That as to this freight it did no storage service and got no pay. That it received no pay whatever from the shippers for loading and no pay from the railroad save the contract allowance. As to such shipments, the railroad performed no pre-transit service. It was all done for it by the warehouse. Notwithstanding such uncontradicted proof, the Commission inferred that the warehouse has "been given dominion over such goods for transportation * * * they should be deemed the consignors of shipments from * * * their warehouse." Fortunately, in the interest of actual facts, the giving of the name of consignee or consignor to such a warehouse does not make it such if in truth and verity it was not the consignor or the consignee.

In view of the fact that the shipper has never surrendered [fol. 96] his dominion, title to and control of his shipment and that the warehouse has never acquired any title to or control of the shipment, but that by contract and practice under the contract the shipment remains subject to the control of the railroad and the shipper, it seems clear that to decide these cases on any other basis than that of the absolute and unquestionable liability of the railroad to the shipper for his goods until the shipper's actual, designated consignee has received them from the railroad, is to bottom a decision on imaginary sand and not on the bedrock of actual fact. True, the warehouse may stand in a potentially secondary or dual status, but that secondary status as warehouseman for the consignee, can only arise after its primary status and duty, as the agent of the railroad, has

been fulfilled and ended. The two duties are successive, not conjoint. On the one hand, the warehouse is the exclusive agent of the railroad until the latter's transportation ends by delivery to the shipper's consignee. On the other hand, the warehouse can only become the consignee's agent and the custodian for the consignee when the named consignee chooses to accept the freight from the railroad's agent and the custodian for the consignee when the named the transporting railroad and as custodian for the consignee, is a tandem and not an abreast relation. Indeed, as we sense this case, the decisive question is whether these warehouses were in good faith made public freight stations by the railroad and whether the warehouses have honestly and in good faith and reality acted as public freight stations in the receipt of outgoing and the delivery of incoming freight. That test was clearly pointed out and made the decisive factor in the Baltimore case (Terminal Warehouse [fol. 97] Co. v. U. S., 31 Fed. (2d) 951.) A study of that case shows that the warehouses were designated in the tariff sheets as public freight stations, but in the proofs it was shown in that case, as Judge Soper says, "that the terminal warehouses, though nominally open to the general public, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to render some warehouse service." In other words, the railroads and warehouses in that case compelled the shipper to submit to the warehouse storage charges if he used the station. In the present case no such condition exists. The shipper simply ships and the warehouse simply receives and forwards the freight thus received without compelling any, or even contracting for any, precedent storage. In the present case any outbound shipper desiring storage or shipment, if he so desires, and any shipper not desiring warehouse facilities may use the warehouse simply as a freight station. That the Baltimore case was decided on facts radically different from the crucial facts in this case is clear from Judge Soper's language, on page 957:

"The contention of the Terminal Warehouse Company is that the Commission's order is wrong, because the Warehouse Company has been designated in the tariff as a public station of the carrier, and hence in this place the carrier is obliged, under the exception to rule 27, to load and unload

carload freight, and may employ and pay the Terminal as its agent to do the work. But the conclusion to which the Commission came destroys the essential premise upon which this argument is based; for it found that the Terminal Warehouses, although nominally open to the general public, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to ren- [fol. 98] der some warehouse service. We are bound by this conclusion of fact, if it is supported by substantial evidence. Anchor Coal Co. v. U. S. (D. C) 25 F. (2d) 462, 471. In our opinion, the evidence not merely supports, but requires, the conclusion which the Commission has reached. It is true that 20 per cent. of all carload package freight, shipped to Baltimore over the Pennsylvania, is handled by the Terminal Warehouse, and that any shipper, desiring warehouse facilities, may send his goods to its platform. But these circumstances do not constitute the warehouse a public station. It is not used by shippers or consignees, who do not require or desire the services of the Terminal Warehouse Company, and either do not make use of any warehouse, or send their goods to other warehouses of a private or public character. The distinction between the situation and that in the case of U. S. v. Baltimore & Ohio Railroad, 231 U. S. 274, 34 S. Ct. 75, 58 L. Ed. 218, upon which the complainant relies, is obvious; for there the premises used by the carrier as a freight station, although furnished and operated by a nearby shipper, who used it to a greater extent than any other shipper, was nevertheless open to all shippers and actually used for the benefit of all alike."

We have already noted some of the facts in reference to the use of these warehouses as public freight stations and reference is further made to the fact that 35% at some of the contract warehouse stations and 75% at others were delivered to the actual consignees within the forty-eight hours of free time and were not warehoused at all. At the Pennsylvania Warehousing Stations from 40 to 60% of incoming freights were taken away without being stored, and at the Philadelphia Warehouse and Cold Storage Sta- [fol. 99] tions 80% were so taken. These warehouses being then in truth and in fact used by the public and the railroads as public freight stations, it seems to me that

the Baltimore case is an authority in favor of the warehouses and not of the Interstate Commerce Commission. Summarizing my view, I would vacate the order of the Commission.

[fol. 100] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Equity

No. 5781. No. 5789. No. 5791

MERCHANTS WAREHOUSE COMPANY et al.

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION

Before Buffington, Circuit Judge, and Thompson and Dickinson, District Judges

FINDINGS OF FACT AND CONCLUSIONS OF LAW—
Filed Nov. 5, 1930

Findings of Fact

THOMPSON, District Judge:

1. The plaintiff warehouses and the complainants before the Commission, who are intervening defendants in this proceeding, operate at Philadelphia warehouses, at and from which they ship and receive, load, unload, store, distribute, and deliver in small quantities carload lots of merchandise, known as "package freight", carried or to be carried at carload rates, which they have previously solicited for such handling from their customers located generally in cities outside of Pennsylvania. For those services they collect from their customers certain warehouse rates and charges.

2. In all the larger cities, including Philadelphia, public warehouses are customarily used for the receipt, storage, and distribution of merchandise. These warehouses perform an important public service. The merchandise warehouse receives goods in carloads and distributes them in

smaller quantities to local jobbers or retailers, or re-ships them in less-than-carload lots to near-by destinations; issues negotiable and non-negotiable receipts, provides insurance, and allows credit to be obtained on merchandise stored; provides recoopering, marking, and separation of [fol. 101] varieties, and various incidental clerical services. Warehouse services enable manufacturers to keep spot stocks for their customers; equalize production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space; reduce freight charges and save time in transit through handling goods in carload quantities; reduce fire risk and loss and damage claims; and eliminate the necessity of providing storage space at point of origin.

3. The plaintiffs in the instant case operate, in competition with the intervenors, who were complainants before the Commission, the same type of warehouses and render the same kind of services generally as the intervenors, for which charges are collected from their customers.

4. The carriers, the Pennsylvania Railroad Company, the Baltimore and Ohio Railroad Company, and the Reading Company, pay to the plaintiffs, in connection with the loading, unloading, and "handling" by them of such merchandise, certain sums, ranging from 30c to 50c per ton, but make no such payments to the warehouses which were complainants before the Commission. No payments are made if the shipments are unloaded within the forty-eight hours free time. The Pennsylvania Railroad Company pays the allowances in question to the Merchants Warehouse Company and the Quaker City Cold Storage Company, the Baltimore and Ohio to the Pennsylvania Warehousing and Safe Deposit Company, and the Reading Company to the Philadelphia Warehousing and Cold Storage Company, the plaintiffs here. Payments are also made by the Reading to the Pennsylvania Warehousing and Safe Deposit Company.

5. In some instances, the carriers own the land or warehouses which the plaintiffs hold under lease. In other in- [fol. 102] stances, the carriers do not own the land or the warehouses.

6. The contracts provide that the warehouse shall accord to traffic passing over the lines of the carrier preference in facilities furnished by the warehouse over traffic passing over other lines; shall load or unload or handle freight received to be shipped over the lines of the carrier, or received by the warehouse from the carrier for delivery to consignees; shall notify the consignees of the arrival of incoming freight; shall be responsible for the prompt collection of freight charges and other charges upon in-bound freight; shall indemnify and hold harmless the carrier for all damage to and all loss of freight in the custody of the warehouse; shall maintain fire insurance; shall notify the carrier of the failure of consignees to receive freight; shall comply with directions with respect thereto received from the carrier; shall indemnify the carrier against liability on account of any of the warehouse's acts of omission and on account of bills for merchandise issued by the warehouse.

7. The terminal services of the contract warehouses include the removing and recording of the seals from the cars placed for unloading, placing seals on loaded cars and preserving the record thereof, examining the merchandise, noting the damage and the cause thereof, the prompt inspection of the equipment, prompt loading and unloading to minimize delay, storing the shipment for the forty-eight hours free time, including protection against fire through insurance, taking up bills of lading and canceling the same, delivering the merchandise to the consignee and taking receipts therefor, handling claims for damage, disposal of refused merchandise, executing bills of lading for outbound shipments, tallying the contents of the cars.

8. The contract warehouses and the intervening ware- [fol. 103] houses are engaged in the same kind of business, and each ships and receives at its warehouses package freight of all kinds destined to or shipped from various points in the United States over the railroads, and the circumstances and conditions surrounding handling and movement of the traffic are similar if not identical.

9. The services which the contract warehouses perform, for which the contracts provide for the payment of compensation by the carrier to them, are performed, for their patrons, by the intervening defendants who were complainants before the Commission; the latter load and un-

load the freight for their patrons, pay and collect freight charges, send notices of arrival to their customers, check the contents of the cars, give the railroads reports, notify the railroads of damage to the freight, prepare bills of lading, mark and stencil packages, recooper and perform in general identical services for their patrons.

10. The warehouses of the plaintiffs and those of the intervenors are served by private side tracks or sidings connecting with the lines of one or more defendants.

11. Both handle the same classes of freight and both obtain business by widespread advertising in prominent trade publications by sending letters, pamphlets, and circulars to prospective customers offering them their services, and by personal solicitation.

12. There is active and keen competition between complainants and the contract warehouses.

13. Concerns using public warehouse facilities generally select the company offering them the lowest aggregate charge for the distribution of their goods. By means of the allowances the contract warehouses are able to quote lower [fol. 104] charges than can the intervenors.

14. The contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question.

15. Traffic considerations have been the primary motive for the payment of these allowances.

16. The facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact open public stations, but are confined to the handling of merchandise for the patrons of the warehouses.

17. The services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed for the benefit of the owner of the merchandise rather than for the railroads.

18. The service rendered by the warehouses under the contracts is a trade service and not a transportation service.

19. While the contract warehouses are not the owners of the goods received or shipped by them, all of the dealings are with these warehouse companies, and none with the owners of the goods.

20. As to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots.

21. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for [fol. 105] transportation purposes, and accordingly for transporation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to the intervening warehouses, shipments from and to their warehouses being handled in substantially the same manner.

22. The Pennsylvania Railroad and the Baltimore and Ohio Railroad have made provisions in their tariffs by which they take upon themselves the service to consignors and consignees of loading and unloading carload package freight carried at railroad rates.

23. Rule 27 of the official Consolidated Freight Classification, to which the carriers are parties, provides as follows:

"Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings."

24. The Pennsylvania Railroad and the Baltimore and Ohio Railroad provide in their tariffs by exceptions to Rule 27 that they agree to load or unload carload package freight at certain Philadelphia freight stations, included among which are the contract warehouses.

25. The Reading Company has no such tariff provisions.

26. The practice of plaintiffs in making allowances to the contract warehouses in connection with the loading or

unloading of package freight at Philadelphia as aforesaid and refusing to make similar allowances to intervenors for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants.

27. These contracts for the payment of the allowances [fol. 106] are devices to attempt to lend legality to the payment of rebates to the contract warehouses.

Conclusions of Law

1. The payment of the allowances by the railroads, in accordance with the contracts, is unlawful in that it subjects the intervening warehouses to unjust discrimination as against the contract warehouses.

2. The payment of the said allowances gives an undue and unreasonable preference and advantage to the contract warehouses and subjects the intervening warehouses to an undue and unreasonable prejudice and disadvantage.

3. The allowances paid to the contract warehouses are unlawful as rebates.

4. The order of the Interstate Commerce Commission of September 28, 1929, is in all respects a lawful order.

5. The petitions should be dismissed.

[fol. 107] In United States District Court, Eastern District of Pennsylvania

In Equity

No. 5781

The Merchants Warehouse Company, Petitioner,

vs.

United States of America and Interstate Commerce Commission, Respondents

No. 5789

The Pennsylvania Warehousing and Safe Deposit Company, Petitioner,

vs.

United States of America and Interstate Commerce Commission, Respondents

No. 5791

The Philadelphia Warehousing & Cold Storage Company, Petitioner,

vs.

United States of America and Interstate Commerce Commission, Respondents

Exceptions to the Findings of Fact and Conclusions of Law—Filed Nov. 19, 1930

And now, to wit, this 18th day of November, 1930, the Petitioners, The Merchants Warehouse Company, The Pennsylvania Warehousing and Safe Deposit Company and The Philadelphia Warehousing & Cold Storage Company except to the Findings of Fact and Conclusions of Law of the Court.

1. The Court erred in Finding of Fact Number 1. The said Finding of Fact is as follows:

* * * * * * *

[fol. 108] 2. The Court erred in Finding of Fact Number 4. The said Finding of Fact is as follows:

. . . . . .

3. The Court erred in Finding of Fact Number 8. The said Finding of Fact is as follows:

. . . . . .

4. The Court erred in Finding of Fact Number 9. The said Finding of Fact is as follows:

. . . . . .

[fol. 109] 5. The Court erred in Finding of Fact Number 10. The said Finding of Fact is as follows:

. . . . . .

6. The Court erred in Finding of Fact Number 13. The said Finding of Fact is as follows:

. . . . . .

7. The Court erred in Finding of Fact Number 14. The said Finding of Fact is as follows:

. . . . . .

8. The Court erred in Finding of Fact Number 15. The said Finding of Fact is as follows:

. . . . . .

9. The Court erred in Finding of Fact Number 16. The said Finding of Fact is as follows:

. . . . . .

[fol. 110] 10. The Court erred in Finding of Fact Number 17. The said Finding of Fact is as follows:

. . . . . .

11. The Court erred in Finding of Fact Number 18. The said Finding of Fact is as follows:

. . . . . .

12. The Court erred in Finding of Fact Number 19. The said Finding of Fact is as follows:

. . . . . .

13. The Court erred in Finding of Fact Number 20. The said Finding of Fact is as follows:

* * * * * * *

14. The Court erred in Finding of Fact Number 21. The said Finding of Fact is as follows:

* * * * * * *

[fol. 111] 15. The Court erred in Finding of Fact Number 26. The said Finding of Fact is as follows:

* * * * * * *

16. The Court erred in Finding of Fact Number 27. The said Finding of Fact is as follows:

* * * * * * *

17. The Court erred in Conclusion of Law Number 1. The said Conclusion of Law is as follows:

* * * * * * *

18. The Court erred in Conclusion of Law Number 2. The said Conclusion of Law is as follows:

* * * * * * *

19. The Court erred in Conclusion of Law Number 3. The said Conclusion of Law is as follows:

* * * * * * *

20. The Court erred in Conclusion of Law Number 4. The said Conclusion of Law is as follows:

* * * * * * *

21. The Court erred in Conclusion of Law Number 5. The said Conclusion of Law is as follows:

* * * * * * *

[fols. 112 & 113] Allen S. Olmsted, 2nd, M. Hampton Todd, Attorneys for The Merchants Warehouse Company, Petitioner. H. Edgar Barnes, Attorney for The Pennsylvania Warehousing & Safe Deposit Company, Petitioner. John P. Connelly, Attorney for The Philadelphia Warehousing & Cold Storage Company.

[fol. 114] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

PETITION FOR ORDER STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION PENDING APPEAL—Filed Nov. 5, 1930

Now comes the Merchant Warehouse Company, the Petitioner above named, by its attorneys Allen S. Olmsted, 2nd, Esquire and M. Hampton Todd, Esquire, and respectfully moves the Court to enter an order as part of its Final Decree in this case or contemporaneous with that Final Decree, staying and suspending the order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company vs. Pennsylvania Railroad Company, pending the perfecting and determination of an appeal to the Supreme Court of the United States and for reasons thereof respectfully represents:

1. On October 8th, 1930 this Court acting through Judges Thompson and Dickinson, filed an opinion announcing that [fol. 115] the bill would be dismissed. Judge Buffington filed a dissenting opinion.

2. Petitioner, being advised that it has the right under the statutes to appeal the dismissal of its bill to the Supreme Court of the United States, purposes to exercise that right promptly after the entry of the Decree dismissing the bill.

3. If the order of the Interstate Commerce Commission shall become effective upon the entry of the Decree dismissing the bill and if upon the appeal the Supreme Court of the United States finds that the order of the Commission should be enjoined, then the Petitioner would be irreparably damaged in the following particulars, to wit:

(a) The contracts which the Commission have held to be illegal involve the performance of a large amount of services by your Petitioner for which services Petitioner is entitled under its contracts to renumeration in a sum aggregating approximately $150,000 per annum. If the order

of the Commission goes into effect temporarily and the carriers do not permit the complainants to perform the services in question, the Petitioner will have no adequate remedy at law against the carriers in that it will be unable to prove what services would have been performed if the contract had remained in effect, and how much its profits would be for the rendition of said services.

(b) The order of the Interstate Commerce Commission requires the defendant, Pennsylvania Railroad Company, to cancel the provisions of its tariff which name Petitioner's warehouses as public freight houses and which [fol. 116] provide that car load package freight will be loaded or unloaded by the carrier at such stations. The defendant and the Commission take the position that in the absence of such tariff provision the payments to your petitioner for loading and unloading freight at such stations so designated would be unlawful. If the said provisions are cancelled, this Statutory Court could not compel the defendant to restore them to its tariff nor could the Supreme Court of the United States. The Interstate Commerce Commission could do so, if at all, only upon complaint and answer, the hearing of which would consume a year or more. Even if a Court of general equity jurisdiction on a suit by the Petitioner against the Railroad Company specifically to enforce its contract with the Railroad Company providing for the rendition of such services and the payment thereof, could and would compel the Railroad Company to republish its tariffs, the prosecution of such a proceeding in equity would involve unwarranted delay and expense. Temporary effectiveness of the Interstate Commerce Commission's order would therefore irreparably injure the Petitioner's rights under its contracts with the Pennsylvania Railroad Company.

(c) The merchants of Philadelphia and others who now receive freight at the Petitioner's warehouses or ship freight from its warehouses, would suffer irreparable damage. In some cases there are contracts of purchase or sale entered into on the faith of the undertaking of the carrier to load or unload package car load freight as part of the services rendered under the freight rate and the said con- [fol. 117] tracts of purchase or sale are at prices which do not contemplate loading or unloading by the shipper or

consignee at his own expense. The payment of such loading and unloading costs could not be recouped by the said merchants either from the purchasers or sellers or from the Railroad Company. In the case of contracts for purchase or sale to be made during the months while this case is pending in the Supreme Court, the uncertainty as to who will have to bear the costs of loading and unloading will be an upsetting factor, a great disturbance to the market and a detriment to the business of the merchants of Philadelphia.

(d) The system of handling package car load freight at Philadelphia enjoined by the Commission's order has been in effect here for forty years. The channels of business have adapted themselves to that arrangement. The abolition of the arrangement will be a severe blow to the business of Philadelphia, a fact recognized it is believed in both the majority and minority opinions of this Court. If the order of the Commission is suspended on appeal, the business community of Philadelphia will as pointed out in the majority opinion, have to adapt itself to the new conditions at whatever cost, but if the order is not sustained on appeal, a great loss will have been sustained by the business community without advantage to anyone and without warrant in law.

(e) The warehouses, complainants before the Commission, would not be injured by staying the Commission's order. In its opinion the Interstate Commerce Commission refused to award damages to the complaining warehouses, on the ground that they had failed to prove dam- [fol. 118] ages, but under date of August 23, 1930, they filed a new complaint with the Interstate Commerce Commission, Docket No. 33790 praying for an award of damages to them on account of the alleged violations of the Interstate Commerce Act. The said Complaint, a copy of which is attached hereto and made a part hereof, marked "Exhibit A" was received by the Commission. The Respondent therein, the Pennsylvania Railroad, is a solvent corporation able to pay damages for all injuries sustained by the complaining warehouses during the period while this appeal is under consideration by the Supreme Court.

(f) Putting the order into effect for a period of months (as contrasted with putting it permanently into effect)

would be of no advantage to the complaining warehouses. The Commission's order does not require the payment of any sums to them. The competitive advantage they would gain in their competition with the petitioning warehouses would not be great because there would not be time especially in view of the uncertainty as to the ultimate disposition of the case, to advertise, solicit and contract for additional business. The advantages which the complaining warehouses seek will accrue in a greater ability to rent their premises and to make other long time contracts for the handling of freight which advantages could not be gained in a period of months of uncertainty. On the contray, the disadvantage experienced by the entire business community because of the temporary upsetting of a long course of trade, would be reflected in an injury to the business of the complaining warehouses.

[fol. 119] Wherefore your petitioner prays that the order of the Interstate Commerce Commission be stayed and suspended pending the perfecting and determination of the appeal to the Supreme Court of the United States.

Your petitioner furthermore prays leave to introduce evidence before this court tending to show that irreparable damage would be done to the Petitioner if the order of the Interstate Commerce Commission be not stayed pending the appeal to the Supreme Court of the United States.

And your petitioner will ever pray, etc.

Allen S. Olmsted, 2nd, M. Hampton Todd, Attorneys for Petitioner.

[fol. 120] EXHIBIT "A" TO PETITION FOR STAY

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 23790

JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY, WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

Complaint

This complaint of the above-named complainants respectfully shows:

I

(a) That on April 26, 1928, the said complainants filed their formal complaint with the commission and that that complaint was docketed under the number 20968; that after public hearing on that complaint the commission, division 3, on December 28, 1929, 160 I. C. C. 563, issued its report and order and therein found that the defendant carrier had violated sections 2 and 3 of the Interstate Commerce Act; that in that report division 3 denied reparation and further hearing on reparation to the complainants; and that by their petition of February 26, 1930, the complainants seek further hearing in the matter of reparation.

(b) That operation of said order of the commission is temporarily stayed and suspended by order of the District Court of the United States, Eastern District of Pennsylvania, (Judges Buffington, Thompson and Dickinson,) of April 15, 1930, and said order is thereby suspended until the further order of said court.

[fol. 121] (c) That the said complainants, for the purpose of protecting their claims for reparation from being barred by the statute of limitations and for the purpose of establishing their statutory rights to recover repara-

tion for damages suffered at the hands of the defendant carrier, as alleged herein, now file this formal complaint.

(d) That the complainants file this complaint in compliance with the letter of the commission's Secretary addressed to complainants' attorney, under date of May 20, 1930, in which the commission required the filing of a new complaint in lieu of the supplemental complaint which was filed by the complainants on April 23, 1930.

II

(a) That during the period of time from April 25, 1928, to the date of the filing of this complaint James Gallagher, complainant herein, trading and doing business under the name and style "Gallagher's Warehouses," had a general office at No. 50 South Third Street in the city of Philadelphia in the State of Pennsylvania and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

(b) That at said times the Northeastern Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Sedgly and Erie Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

(c) That at said times Walter A. Bailey, complainant herein, trading and doing business under the name and style "Bailey Warehouses," had a general office at Delaware Avenue and South Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his [fol. 122] said warehouse business.

(d) That at said times the Terminal Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Delaware and Fairmount Avenues in said

Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

III

That at said times the Pennsylvania Railroad Company, the defendant, was a corporation organized under the laws of Pennsylvania and was a common carrier engaged in the transportation of property wholly by railroad, for hire, between said Philadelphia, a point on its railway route, and various points outside the state of Pennsylvania, and, as such common carrier, was subject to the provisions of the Interstate Commerce Act.

IV

(a) That at said times the Merchants Warehouse Company, Inc. was a corporation organized under the laws of said Pennsylvania; had a general office at No. 10 Chestnut Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia and competed with each of the complainants in carrying on its said warehouse business.

(b) That at said times The Quaker City Cold Storage Company, Inc. was a corporation organized and existing under the laws of Pennsylvania; had a general office at No. 211 Callowhill Street in said Philadelphia; occupied and used warehouses and warehouse facilities in said Philadelphia; conducted a warehouse business at said Philadelphia and in the conduct of that business competed with complainants.

(c) That, for convenience, said Merchants Warehouse Company and said Quaker City Cold Storage Company, Inc. collectively are referred to herein as the subsidized warehouse companies.

[fol. 123] V

(a) That during the period of time from April 25, 1928, to date of the filing of this complaint, herein called the

period of two years, each of the complainants and said subsidized warehouse companies in the conduct of his or its warehouse business, shipped numerous carloads, and smaller lots of property outbound from their warehouses in said Philadelphia to various points outside the state of Pennsylvania and tendered said property to defendant for transportation.

(b) That during said period of two yeafs each of the complainants and said subsidized warehouse companies, in the conduct of his or its warehouse business, caused numerous carloads, and smaller lots, of property to be shipped from various points outside the state of Pennsylvania to said Philadelphia and to be delivered to them by the defendant at their warehouses in said Philadelphia.

(c) That during said period the defendant and its connecting lines transported said property, for hire, in interstate commerce between said warehouses in Philadelphia and said points outside the state of Pennsylvania.

(d) That said property which defendant transported for complainants was similar to the property which defendant transported for said subsidized warehouse companies and the defendant performed said transportation services contemporaneously and under substantially similar circumstances and conditions.

VI

(a) That at various times during said period of two years the defendant gave allowances of 50 cents per ton and of other amounts per ton to said subsidized warehouse companies out of its published freight rates for said transportation of said property to and from warehouses of said subsidized warehouse companies.

(b) That certain of said allowances are referred to in defendant's published tariff bearing the number G. O. ICC No. 14400.

[fol. 124] VII

(a) That at the times the defendant transported the property, as alleged in Paragraph V above, the defendant charged, collected and received its filed and published rates

applicable to said transportation service and, later, at various times, the defendant, by the means of the allowances, special rates, rebates, drawbacks and concessions, as alleged in Paragraph VI above, which were devices used for the purpose of facilitiating violations of sections 2 and 3 of the Interstate Commerce Act, refunded and remitted to said subsidized warehouse companies part of the defendant's said filed and published rates which were lawfully applicable to said transportation of property performed by defendant for said subsidized warehouse companies.

(b) That through and by means of said devices the defendant transported said property for said subsidized warehouse companies at net rates which were materially less than its filed and published rates which it charged and collected for similar transportation of property for complainants.

VIII

That by reason of the facts stated in the foregoing paragraphs complainants have been subjected to the payment of rates and charges for transportation which were, when exacted, and still are unjustly discriminatory in violation of section 2 of said act, and, unduly perferential of said subsidized warehouse companies, competitors of complainants, and unduly prejudicial to complainants in violation of section 3 of said act. That each of the complainants has been injured thereby to his or its damage in a large sum of money.

IX

Wherefore complainants pray that defendant may be required to answer the charges herein; that after due hearing and investigation the commission find that said act has been violated as stated in Paragraph VIII above and [fols. 125 & 126] that an order be made commanding said defendant to pay to each of complainants by way of reparation for said damage, and, for additional damage arising from similar unlawful conduct of defendant during the prosecution of this case, such sum of money as, in view of the evidence to be adduced herein, the Commission shall determine that each of the complainants is entitled to as

an award of damages, with interest, under the provisions of said Act for violation thereof and that such other and further order or orders be made as the Commission may consider proper in the premises.

James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, Complainants, by John J. Hickey, 800 Southern Building, Washington, D. C., Attorney for Complainants.

Dated at Washington, D. C., August 23, 1930.

[fol. 127] IN UNITED STATES DISTRICT COURT

In Equity, No. 5781

[Title omitted]

ANSWER OF UNITED STATES TO PETITION FOR STAY OF ORDER OF INTERSTATE COMMERCE COMMISSION PENDING APPEAL—Filed Nov. 17, 1930

United States, one of the above-named respondents, for answer to the petition filed herein against it for an order from this Court staying the enforcement of the order of the Interstate Commerce Commission pending the petitioner's proposed appeal to the Supreme Court of the United States, says:

I

United States admits the allegations of paragraph numbered 1 of the petition.

II

For answer to paragraph numbered 2 of the petition, United States says that Urgent Deficiencies Act (38 Stat. 219) provides for a direct appeal to the Supreme Court of the United States from a final decree of a specially-constituted District Court in a suit to enjoin, set aside, annul, or suspend an order of the Interstate Commerce Commission; but United States has no knowledge of petitioner's purpose to prosecute an appeal in this case.

[fol. 128] III

For answer to paragraph numbered 3 of the petition, and the several subdivisions thereof, United States denies that petitioner will suffer irreparable damage or any other legal injury if the order of the Interstate Commerce Commission becomes effective pending an appeal of this case to the Supreme Court of the United States; and for further answer to the said subdivisions, seriatim, of said paragraph numbered 3, United States says:

a. Section 15 (13) of the Interstate Commerce Act provides petitioner a clear, adequate, and complete remedy for collection from the carriers of any compensation to which it may be legally entitled for the performance of any transportation service rendered by petitioner in connection with the interstate transportation of any of its shipments; and United States further says that even assuming, as suggested in said subdivision (a), that the carriers do not permit petitioner to perform any transportation service in connection with its shipments during the period of the appeal to the Supreme Court, no legal injury could result to petitioner for the reason that it will have performed no service for which it may legally be compensated; and United States further says that if the Supreme Court should hold that petitioner is legally entitled to compensation from the carriers for performing the services in question, its right rests not upon the contracts but upon the provisions of said Section 15 (13) of the Interstate Commerce Act, and the remedy so provided may be invoked by it regardless of the provisions or the existence of said contracts. Petitioner's private contract rights are not, and can not be made an issue in this suit, nor a ground for granting the stay sought by petitioner.

b. United States says that while the order of the Commission requires cancellation of the tariffs as alleged in sub-
[fol. 129] division (b), it does not, as it could not, require that the contracts be cancelled, nor does it make any other requirement with respect to said contracts; and United States further says that nothing in the Commission's order prevents the carriers from permitting petitioner to perform, or prevents petitioner from performing, the loading and unloading service upon cars consigned to or from its warehouses pending appeal; and if the Supreme Court

should hold said service to be those for performance of which petitioner is lawfully entitled to receive compensation, petitioner may compel payment thereof under said Section 15 (13), in the improbable event the carriers refuse to make such payments voluntarily with respect to shipments handled during the appeal as well as those to be handled thereafter.

c. United States denies that "the merchants of Philadelphia and others who now receive freight at the petitioner's warehouses or ship freight from its warehouses, would suffer irreparable damage", unless the Commission's order be stayed pending appeal as alleged in said subdivision (c). Further answering said subdivision, United States says that the Commission's order leaves the carriers free to continue loading and unloading carload shipments for the merchants of Philadelphia and others upon the public team tracks, or delivering tracks of those carriers, and that the order does not prevent the merchants of Philadelphia or others from receiving and accepting said loading and unloading services free of charge from the carriers upon the latter's own tracks; nor does the order prevent the carriers from paying allowances to shippers for loading and unloading carload shipments on the carriers' public delivery tracks. United States further says that the facts found by the Court show that the allowances, characterized by the Court as unlawful rebates, are not paid by the carriers to the merchants of Philadelphia, and that their only possible benefit, if any, therefrom is indirect in that it depends upon whether or not petitioner reduces its [fol. 130] warehouse rates to such of said merchants as are its customers to the extent of the allowances or any part thereof.

d. United States says that the allegations contained in said subdivision (d) are based entirely upon speculation and are not susceptible to proof; and denies that any facts of record support the assumption that the freight rates of all the merchants in Philadelphia will be automatically increased by the amount of the rebates, and says that the facts of record show that the operators of the several non-contract warehouses who serve a great number of Philadelphia merchants and who perform services identical to those performed by petitioner, and without the aid or

benefit of the rebates charge their customers approximately the same rates as those charged by petitioner. United States further says that the allegations of said subdivision (d) with respect to the alleged disarrangement and disruption of the channels or methods of business established as a result of the payment of the rebates are without foundation in and are contrary to the facts of record in that they assume that to deprive petitioner of the rebates will deprive petitioner's customers of the use of its warehouse trade services, whereas, the facts found by the Commission and by this Court establish that it is because petitioner's warehouses as well as those of the non-contract warehouses render a storage handling and distribution service that the merchants of Philadelphia and those located elsewhere avail themselves of the use of the warehouses, and United States denies that such use and availability of said warehouses will be minimized or affected in any way by enforcement of the Commission's order pending appeal.

e. United States denies that the non-contract warehouses who were complainants before the Commission would not be injured by staying the Commission's order pending appeal; and further denies that it lies with petitioner to prove [fol. 131] injury or lack of injury to said non-contract warehouses; and United States further says that even if the allegations of said subdivision (e) be true, the lack of injury to the non-contract warehouses constitutes no legal ground or showing sufficient to entitle petitioner to continue receiving rebates, the acceptance and receipt of which is a criminal offense in violation of the Elkins Act (34 Stat. L. 587, as amended 36 Stat. L. 1167, U. S. C. Tit. 49, Secs. 43, 47).

Further answering the last sentence of said subdivision (e), United States says that if as alleged in said paragraph the Pennsylvania Railroad Company is a solvent corporation able to pay said non-contract warehouses for all injuries sustained by them if the order be stayed pending appeal, it is equally solvent and able, and can be compelled under Section 15 (13) of the Interstate Commerce Act, to pay petitioner for all transportation services rendered by it during the period of appeal.

f. For answer to said subdivision (f), United States says that the Commission's order does not purport to give the

non-contract warehouses any "advantage" over petitioner, but shows on its face that it seeks to end the disadvantage under which those warehouses have labored as a result of the inequality and discriminatory treatment accorded them by the carriers as compared with petitioner; and that said non-contract warehouses obviously will continue to suffer a disadvantage and discrimination each and every day the enforcement of the Commission's order is delayed.

IV

Further answering the petition, United States says that both the Interstate Commerce Commission and this Court have found and concluded from the facts of record that the allowances constitute unlawful rebates; and says further that the receipt and acceptance by a shipper of rebates is made a criminal offense by the provisions of the Elkins Act mentioned above, and United States denies petitioner's [fol. 132] legal right to continue receiving the rebates or any part thereof. United States further says that inasmuch as it is established beyond question that there is substantial evidence to support the finding of the Commission and of this Court that the allowances constitute rebates, and that in view of the holding of the Supreme Court in Erie Railroad Company v. United States, 280 U. S. 98, that such finding is conclusive upon the courts when supported by substantial evidence, petitioner's prayer for a stay of the Commission's order pending appeal is nothing more than a request that this Court sanction, concur in, and approve the proposition that to meet the ends of justice and equity it is essential that petitioner be permitted to continue violating a criminal statute.

Wherefore, having fully answered, United States prays that the petition for a stay pending appeal be denied and for the entry of a decree by the Court dissolving the temporary injunction heretofore issued in this case and dismissing the petition.

(S.) Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brien, Assistant to the Attorney General. Paul Freeman, Acting United States Attorney.

[fol. 133] IN UNITED STATES DISTRICT COURT

In equity. No. 5781

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION TO PETITION FOR ORDER STAYING THE ENFORCEMENT OF THE COMMISSION'S ORDER PENDING APPEAL—Filed Nov. 14, 1930

The Interstate Commerce Commission, hereinafter called the Commission, respondent in the above-entitled suit, for answer to the petitioner's petition for a stay of the enforcement of the Commission's order pending appeal, respectfully presents, in opposition to said petition, that:

I

In the proceeding entitled James Gallagher et al. v. Pennsylvania Railroad Company et al., 160 I. C. C. 563, the Commission found that the payment of allowances to the so-called contract warehouses, including petitioner, and the withholding of such allowances to other warehouses in Philadelphia who complained to the Commission, (hereinafter called complainants), constituted unjust discrimination, undue preference of the contract warehouses and undue prejudice to the complainants, in violation of Sec-[fol. 134] tions 2 and 3 of the Interstate Commerce Act. The order of the Commission in said proceeding requires that said unjust discrimination and said undue preference and prejudice be removed by discontinuing the payment of said allowances. This court has sustained the validity of that order. Tto stay the operation of the order pending the appeal would, therefore, result in prolonging the existence, for a period of many months, of the aforesaid violations of the statute.

II

In said proceeding the Commission found that the allowances paid to the petitioner were rebates. This court has sustained that finding, its conclusions of law expressly holding that "the allowances paid to the contract warehouses

are unlawful as rebates." Therefore, to stay the Commission's order pending appeal would in effect constitute the sanctioning by this court of further payment of said rebates.

III

We deny that petitioner will suffer irreparable injury or any injury whatever by reason of the enforcement of the Commission's order, or by reason of the denial by this court of the petitioner's prayer for a stay of that order; that petitioner can not suffer legal injury by reason of the immediate cessation of the payment to it of the allowances, in view of the adjudication that such allowances are unlawful rebates; that petitioner may not set up any right which has for its basis and foundation the continuance of the payment to it of unlawful rebates; that petitioner can not possibly maintain a right to the continuance of the payment of rebates to it by a common carrier subject to the [fol. 135] Interstate Commerce Act. That statute, nor any statute, court decision, or rule of law, vests no right in petitioner to unlawful rebates, but, on the contrary, condemns and declares to be unlawful the payment of such rebates. Neither at law, nor in equity, may petitioner or any person set up a right to receive from a common carrier engaged in interstate commerce rebates condemned by the statute, declared in numerous court decisions to be contrary to public policy, unconscionable, and, under certain circumstances, a criminal offense under the Elkins Act (Act of February 19, 1903, 32 Stat. 847, as amended by the Act of June 29, 1906, 34 Stat. 584, U. S. Code, Title 49, chap. 2, sec. 41 (1) p. 1673.).

IV

This court expressly found, in its findings of fact numbered 14 to 18, both inclusive, that the contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact open public stations,

but are confined to the handling of merchandise for the patrons of the warehouses; that the services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed for the benefit of the owner of the merchandise rather than for the railroads; that the service rendered by the warehouses under the con-[fol. 136] tracts is a trade service and not a transportation service. The Commission in its report made the same findings of fact. Inasmuch as the only evidence before this court bearing upon these matters was a certified copy of the evidence introduced before the Commission, it follows that the finding of these facts by the court was the same as and at once a finding that the Commission's findings of fact were supported by substantial evidence. The Supreme Court has repeatedly held that "any finding of fact by the Commission if supported by evidence is final and conclusive on the courts" (Keller v. Potomac Electric Power Co., 261 U. S. 428, 441-442; Interstate Com. Comm. v. Union Pacific R. R., 222 U. S. 541, 550; Interstate Com. Comm. v. Delaware, L. & W. R. R. 220 U. S. 235, 251-252; United States v. Erie R. R., 280 U. S. 98, 102, and cases cited). It must, therefore, be taken as settled that the petitioner performs no services for the carriers for which it is entitled to compensation, and, therefore, petitioner could have no remedy at law or in equity against the carriers on account of non-payment of the allowances in question during the pendency of any appeal which may be taken in this case.

V

But even if it be assumed arguendo that petitioner did perform transportation services, and if it be further assumed that the Supreme Court on appeal should hold the Commission's order invalid, still petitioner would not be without remedy to recover compensation for such services performed during the pendency of the appeal, but would have its remedy before the Commission under the provisions of Section 15 (13) of the Interstate Commerce Act, which provides:

[fol. 137] "If the owner of property transported under this Act directly or indirectly renders any service connected

with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, * * *"

Such remedy is clear, adequate and complete. In numerous cases the Commission has awarded reparation under the above provision of the statute. Petitioner admits in paragraph 3 (b) of its petition that the Commission has such jurisdiction. Therefore, petitioner can not in any event suffer damage that is irreparable by reason of the denial by this court of its petition for a stay of the Commission's order pending appeal.

VI

We deny that petitioner has the right to speak for the merchants of Philadelphia. We further deny that its petition, which seeks to set up that enforcement of the Cimmission's order will result in detriment to the business of the merchants of Philadelphia, does actually speak for the merchants of Philadelphia or for the City of Philadelphia as a whole, but speaks for petitioner and for petitioner's customers only. The Terminal Warehouse Company and the other five warehouse companies who were complainants before the Commission are lawfully engaged in business in the City of Philadelphia, operating a dozen or more warehouses, in competition with petitioner in the same kind of business, and these warehouse companies have numerous customers who are Philadelphia merchants. Obviously, petitioner does not speak for these business concerns of Philadelphia, nor take into consideration the detriment to [fol. 138] their business because of the payment of the allowances to the contract warehouses in the past and the probable continued payment of the same allowances during the pendency of the appeal if the stay prayed for is granted.

By reason of the receipt of the allowances, the contract warehouses have been able to fix subnormal warehouse

rates. The complainants, in order to compete with the contract warehouses, have been compelled to quote the same subnormal rates, but without the advantage of allowances with the result that complainants have suffered loss of legitimate business profits. When the order of the Commission requiring the discontinuance of the allowances takes effect, it is possible that the contract warehouses will increase their present subnormal warehouse rates up to a normal basis, and the complaining warehouses may do likewise. But we submit that if this should take place, it will not cause either the contract warehouses or their customers any legal injury nor constitute any detriment to their business of which they may legally complain. They are not entitled to subnormal warehouse rates made possible only through the granting of unlawful rebates to certain favored warehouses, a thing *ipso facto* illegal, doubly reprehensible because of the resulting discrimination against the complaining warehouses.

VII

The Commission's order requires that the Pennsylvania Railroad cease, desist and abstain from publishing or making allowances to the Merchants Warehouse Company in connection with the loading or unloading of package freight at Philadelphia, Pa., and further requires that said defendant cancel its tariff provisions which make the warehouses of said Merchants Warehouse Company a part of said defendant's station facilities at Philadelphia, Pa., but [fol. 139] the order contains no requirement that the Pennsylvania Railroad cancel its tariff provisions which provide that carload package freight will be loaded or unloaded by the carrier at its public freight stations. Hence, if any shipper or receiver of carload package freight in the City of Philadelphia wishes to ship or take delivery of such carload package freight through the public freight stations of the Pennsylvania Railroad Company, they have the legal right to do so. If, however, any member of the Philadelphia public wishes to obtain the special warehouse services afforded by petitioner, they are at liberty to contract with the petitioner to that end, and the Commission's order in no way attempts to regulate the amount of the petitioner's warehouse charges, but does require that the carriers cease

and desist from paying the allowances to the petitioner which have been found by the Commission and by the court to be unlawful rebates.

VIII

While it is true that the complainants have the right to petition the Commission for an award of damages under Section 16 (1) of the Interstate Commerce Act, still the burden of proof in such cases is heavy, complainant being compelled to submit definite proof of damage and the amount of the actual pecuniary loss, the measure of damages in such case (violation of Sections 2 and 3 of the Act) being that laid down in Penn. R. R. Co. v. International Coal Co., 230 U. S. 184, 206, and because of the difficulty of the proof, awards by the Commission under those sections have been rare. Moreover, even should complainants be able to prove and to recover the actual monetary loss, they will be unable in any event to recover losses actually sustained [fol. 140] which come within the category of remote and consequential damages which flow from a discrimination of this kind. Complainants have suffered, and until the Commission's order becomes effective will continue to suffer, incalculable and irreparable damage because of the discrimination.

Thus, if the operation of the Commission's order is stayed and the validity of the order is sustained by the Supreme Court, it will result that, even though the complainants should sustain the burden of proof placed upon them and recover the damages which the law allows sustained during the period of the pendency of the appeal, still complainants will not be made whole, for they will inevitably sustain irreparable losses and injury, whereas, on the other hand, if the stay should be denied and the Supreme Court should hold the Commission's order invalid, petitioner will have the right to prosecute its claim for reparation under Section 15 (13) of the Interstate Commerce Act and recover from the carrier full allowance for any transportation service it performed for the railroad.

We suggest that the latter alternative is the one far more likely to meet the demands of justice and fairness in respect of the conflicting interest here disclosed, because of the conclusion by this court, after mature deliberation, that

the Commission's order "is in all respects a lawful order," and the further fact that the validity of a similar order of the Commission was sustained by the specially-constituted three-judge court in the Baltimore case, Terminal Warehouse Company of Baltimore City v. United States et al., 31 Fed. (2d) 951.

[fols. 141 & 142] IX

Petitioner is not in a position to suggest that "putting the order into effect for a period of months (as contrasted with putting it permanently into effect) would be of no advantage to the complaining warehouses." It is obvious that the continuance of the allowances will be an advantage to the petitioner, and it seems indisputable that the removal of that advantage will be of benefit to the complainants. Complainants speak for themselves in this regard and they are now before the court praying that the Commission's order be allowed to become effective immediately. The purpose and intent of the order is not to give complainants any "advantage" but merely to put them on a plane of equality with their competitors in so far as treatment at the hands of common carriers is concerned, a consummation which the Interstate Commerce Act since its inception has contemplated and expressly required.

X

The Commission hereby prays that the said petition be denied and that final decree vacating and dissolving the temporary injunction and dismissing the bills for want of equity be entered.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, of Counsel.

[fol. 143] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781\

[Title omitted]

ANSWER OF THE INTERVENING DEFENDANTS TO THE PETITION OF THE MERCHANTS WAREHOUSE COMPANY FOR AN ORDER OF THIS COURT STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION PENDING APPEAL—Filed Nov. 10, 1930

James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company for answer to the petition of the Merchants Warehouse Company, say:

I

Answering paragraph 1 of the petition. We admit all that is alleged in paragraph 1.

Answering paragraph 2 of the petition. We deny the allegations in paragraph 2. Our position is that the petitioner has no right of appeal to the Supreme Court of the United States. The petitioner is claiming a right to collect compensation from the Pennsylvania Railroad Company under certain contracts or agreements in writing and to use the provisions of the act of June 18, 1909, C 309, 36 [fol. 144] Stat. 539, as amended by Urgent Deficiencies Act of October 22, 1913, C 32, 38 Stat. 208, 220, to enforce its alleged right. Such a suit on contract cannot be prosecuted under that statute. The railroad company, through refraining from participation in the case at bar, has manifested that it does not desire to pay that compensation. In the absence of the railroad company as a party to this suit the petitioner is without statutory authority to prosecute its alleged appeal further. Sprunt and Sons v. United States, 281 U. S. 249, decided April 14, 1930.

Answering paragraph 3 of the petition. We deny that the application or effect of the commission's order, upon vacation of the temporary stay granted by this court, will result in irreparable injury or any damage to the petitioner.

We submit the following in answer to each of the subdivisions of paragraph 3 of the petition.

Answering sub-paragraph (a). We deny the assertions in the petition that the contracts require the petitioner to perform service for the Pennsylvania Railroad Company. The petitioner did not offer evidence, at the public hearing before the commission, tending to show that the petitioner undertook to perform any service for the railroad company under the contracts or that the petitioner performed any such service. This court and the commission found that no such service was performed by the petitioner. This court, in its opinion of October 8, 1930, among other things, said:

"But there is substantial evidence to support the facts found by the commission that the warehouses of the plaintiffs are not in fact open public freight stations of the railroads; that the service rendered by them under the contracts is a trade service and not a transportation service, in that it was rendered by the contract warehouses and by the interveners, each for its patrons in precisely the same way; that thereby the plaintiffs are enabled to perform such service for their patrons for a lower charge than that for [fol. 145] which the interveners can perform the same service to their patrons.

It is clear that the payment of the allowances by the railroads under the contracts was not a consideration for employment in a transportation service."

Answering sub-paragraph (b). We deny the assertions that the petitioner will be subjected to irreparable injury. We submit that if and when the Supreme Court of the United States finds the contracts and allowances to be lawful then the petitioner can, in suit upon its contract, recover the aggregate of the allowances deferred awaiting that finding.

Answering sub-paragraph (c). In this sub-paragraph the petitioner assumes to state the rights of others, not named, in support of relief sought by the petitioner and to establish that the unnamed shippers may be subjected to irreparable injury. Absence of foundation relieves us of the necessity of discussing the allegations in this sub-paragraph. However, if petitioner's assertions are true it necessarily follows that irreparable injury will be inflicted upon the intervening defendants through further stay of the order of the commission which will enable the petitioner to use unlawful allowances and rebates in unfair competi-

tion enabling the petitioner to entice business from the intervening defendants.

Answering sub-paragraph (d). The so-called system of handling package carload freight at Philadelphia, that is, the allowance practice is not a general or reputable practice. A few selected warehouse companies receive the allowances and their numerous competitors and the shipping public generally, insofar as is evidenced in this case, do not receive such allowances or equivalent reductions of freight rates. The elimination of the unlawful rebating practice, which resulted to the benefit of a chosen few, will not injure the general public.

Answering sub-paragraph (e). The intervening defend- [fol. 146] ants would be subjected to irreparable injury through a further stay of the order of the commission. Under the Interstate Commerce Act they can claim only compensatory damages. Pennsylvania Railroad v. International Coal Company, 230 U. S. 184, 206. The intervening defendants can claim damages only on competitive business which they can obtain by reducing their compensation to the sub-normal basis which the petitioner is enabled, by the allowances, to impose upon all competitive warehouse trade. The intervening defendants cannot claim or recover damages for loss of business in instances where the sub-normal basis makes their solicitiation or quotations futile. And they cannot obtain reparation for the entrenched power in business circules gained by the petitioner through taking the benefit of the allowances for many months and years—every additional day of the allowances adding to that power.

Answering sub-paragraph (f). This sub-paragraph of the petition reflects a groundless effort of the petitioner to describe prospective business efforts of the intervening defendants and persons other than the petitioner and the future results thereof. Our answer to sub-paragraph (e) is our answer, and refutation, of sub-paragraph (f).

II

The commission found that the allowances were unlawful rebates. This court concluded that the giving of the allowances in question subjected the intervening defendants to unjust discrimination in violation of section 2 of the Interstate Commerce Act. It necessarily follows that

continuance of the giving of the allowances will consummate numerous willful violations of section 1 of the Elkins Act, a criminal statute. Every assertion, in the petition, of damage which may result to the petitioner from vacating the order of this court which temporarily stays operation [fols. 147 & 148] of the commission's order applies with equal force in establishing that irreparable injury will be inflicted upon the intervening defendants through further stay and suspension of that order.

III

Wherefore the intervening defendants, having fully answered the petition, pray that the petition be dismissed for want of equity at the cost of the petitioner and that this court forthwith enter its decree, in the form heretofore proposed by the United States, vacating and dissolving the temporary orders of this court entered on February 21, 1930, and April 15, 1930.

James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, Intervening Defendants. By John J. Hickey, John J. Hickey, 800 Southern Building, Washington, D. C.; Thedore L. Reimel, Theodore Reimel, 108 North 19th Street, Philadelphia, Pa., Solicitors for Intervening Defendants.

[fol. 149] In United States District Court, for the Eastern District of Pennsylvania, Sitting in Equity

December Term, 1929

No. 5781

Injunction Bill

The Merchants Warehouse Company

vs.

United States and Interstate Commerce Commission

December Term, 1929

No. 5789

Injunction Bill

PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY

vs.

UNITED STATES and INTERSTATE COMMERCE COMMISSION

December Term, 1929

No. 5791

Injunction Bill

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY

vs.

UNITED STATES and INTERSTATE COMMERCE COMMISSION

INJUNCTION BILL

Before Judges Buffington, Circuit Judge, Thompson and Dickinson, District Judges, Specially Sitting

OPINION SUR PETITION FOR ORDER OF SUPERSEDEAS—Filed Nov. 19, 1930

PER CURIAM:

The United States Commerce Commission made a "cease and desist order" against the railroads concerned with this [fol. 150] cause. The order was approved by the above Specially Constituted Court, the Circuit Judge, however, dissenting. The parties concerned against whom the order has been made have the right to an appeal to the Supreme Court of the United States, which appeal, with the sanction of this Court, may be made a supersedeas. The petition now under consideration is for such superseadeas order. Answers have been filed to the petition opposing the allowance of a supersedeas. The question is over its allowance. In the cases which may be termed ordinary cases in Equity supersedeas orders are usually allowed. Appeals from orders of the Interstate Commerce Commission are, however, in a class by themselves.

The opinion in the Virginia case, reported in 272 U. S., 658 has been fitly characterized by counsel as illuminating this general subject. In that case an order of supersedeas had been made by the Court below, from which order the United States and the Commission appealed by way of cross-appeal to the appeal which had been taken from the decree which affirmed the order of the Commission.

From the opinion in the cited case the following propositions may be extracted:

1. The policy of the law is to apply I. C. C. rulings without "the law delays" and not to interfere with nor interrupt their operation. This general policy has been enjoined by Congress.

2. This policy is emphasized when the Court below has approved of the orders of the Commission.

3. There is because of this a prima facie presumption against the allowance of a superesedeas, and it is not to be allowed unless the special features of the particular case [fol. 151] justify it.

4. The key to the ruling in the cited case is whether there is any peasonable basis for the expectation of a reversal by the Supreme Court.

5. A dissenting opinion will not of itself raise a doubt but it may justify it.

6. Irreparable damage alone is not a justifying cause for suspending the operation of the order of the Commission but is to have consideration.

Confidence in the correctness of a judgment reached and a reasonable doubt of the correctness of that judgment may seem to be inconsistent states of mind. They may, none the less, both exist. The judgment reached in the instant case was a majority judgment. The Judges who joined in it, of course think the majority opinion is the correct one, but the questions raised are of such a character that no one could be so sure that the majority opinion is right as to feel that there may not be a reasonable expectation of a reversal. The practices condemned by the order of the Commission have been followed for more than a gene-

ration. If, as has been found, they are condemned by the law they must, of course, cease, but there would be little, if any, value in interdicting then during the interval between the order by the Commission and the final determination of the cause by the Supreme Court. This was the thought which prompted the decree of this Court suspending the order of the Commission until this Bill was heard. There is the same reason for allowing the supersedeas as for the interdicting order before entered. Indeed, the latter is but an extension in time of the other. "Irreparable damage" is a sonorous phrase but is often without any definite meaning. The appellants will, of course, be without [fol. 152] their allowance during the pendency of the appeal, if the supersedeas is not allowed. This would be a loss and is irreparable in a sense, if the allowances cannot be recovered after a reversal; otherwise their loss would be barely more than negligible. Something more than this is called for to justify a supersedeas.

The like observation applies to the complainants against the condemned practices who might lose some business if the supersedeas is allowed and the decree of this Court affirmed. This loss is more or less speculative. There is in the sense indicated irreparable loss whether the supersedeas is allowed or refused.

The touchstone of the question is, as already indicated, whether there can be given what is called in some jurisdictions "a certificate or reasonable doubt." This certificate we are ready to give.

The appellants and their counsel entertain such a doubt of the correctness of the law as announced in the majority opinion of this Court, and the good faith of the appellants and their counsel in taking the appeal is undoubted. Indeed, the word doubt does not express the state of mind of the appellants. They feel more than hopeful of securing a reversal of the decree reached, and are fully justified in this attitude of mind, not only because of the nature of the questions raised, but also because one of the sitting Judges was in agreement with the appellants on their version of the law. As already stated, neither the fact of irreparable damage nor the fact of a dissenting opinion will either or together alone support an order of supersedeas. We base the order made upon the fact of irreparable damage fol-

[fol. 153] lowing its refusal; the fact that the conclusion was reached by a majority of this Court, with the Circuit Judge dissenting, and upon the unanimous judgment of the Court that there is not merely reasonable doubt of the true state of the law on the subject but that this doubt is amply sufficient to justify the appeal, and that neither the orders of the Commission nor the decree of this Court should go into operation and effect until the law of the subject has been finally declared.

Our conclusion may be summed up in the judgment that on a consideration of all the fact features of the case it would be disrupting to interfere with such long existing practices until their illegality has been finally determined, and that nothing would be gained of any real value in enforcing a decree which may be reversed.

We accordingly grant the order of supersedeas, and allow the exception thereto asked for by the appellees.

We add the statement that before allowing this supersedeas we receive the assurance of counsel on both sides of the controversy that a hearing upon the appeal would be speeded in every possible way, the appellants undertaking to perfect their appeal, if possible, within thirty days, and the assurance being given that an appropriate motion would be made in the Supreme Court for an early disposition of the case.

[fol. 154] IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

In Equity. No. 5781

THE MERCHANTS WAREHOUSE COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents

FINAL DECREE—Filed Nov. 19, 1930

These causes came on for final hearing at this term before the specially constituted court of three judges, duly

convened according to statute, and was argued by counsel and evidence, arguments and briefs of the parties having been fully heard and considered, and the Court being of the opinion, for the reasons set forth in its written decision filed herein on October 8, 1930, that the petitions should be dismissed for want of equity, and that the orders heretofore entered by the Court temporarily staying and suspending the operation of the order of the Interstate Commerce Commission should be dissolved, it is

Ordered, adjudged and decreed as follows: (1) that the temporary orders entered February 21, 1930 and April 15, 1930, staying and suspending the operation of said order of the Interstate Commerce Commission be, and they are hereby dissolved; (2) The exceptions of the plaintiff to the Court's findings of fact and conclusions of law are overruled and dismissed; (3) That the petitions be, and they are hereby dismissed for want of equity, at the cost of the petitioners.

[fol. 155] This 19th day of November, 1930.

(S) Joseph Buffington, United States Circuit Judge.
(S) J. W. Thompson, United States District Judge.
(S) O. B. Dickinson, United States District Judge.

[fol. 156] IN UNITED STATES DISTRICT COURT

No. 5781.

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Nov. 19, 1930

Petition for Appeal

Considering itself aggrieved by the decision of the United States District Court for the Eastern District of Pennsylvania, the Plaintiff therein, Merchants Warehouse Company, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Assignments of Error

And the said Merchants Warehouse Company assigns the following errors in the record and proceedings in the said case:

1. The District Court erred in dismissing the bill.

2. The District Court erred in refusing to enjoin the order of the Interstate Commerce Commission entered in [fol. 157] the case of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company vs. Pennsylvania Railroad Company.

3. The District Court erred in its Finding of Fact Number 1 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

1. The Court erred in Finding of Fact Number 1. The said Finding is as follows:

* * * * * * *

4. The District Court erred in its Finding of Fact Number 4 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 4. The said Finding of Fact is as follows:

* * * * * * *

[fol. 158] 5. The District Court erred in its Finding of Fact Number 8 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 8. The said Finding of Fact is as follows:

* * * * * * *

6. The District Court erred in its Finding of Fact Number 9 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 9. The said Finding of Fact is as follows:

* * * * * * *

[fol. 159] 7. The District Court erred in its Finding of Fact Number 10 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 10. The said Finding of Fact is as follows:

* * * * * * *

8. The District Court erred in its Finding of Fact Number 13 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 13. The said Finding of Fact is as follows:

* * * * * * *

9. The District Court erred in its Finding of Fact Number 14, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 14. The said Finding of Fact is as follows:

* * * * * * *

10. The District Court erred in its Finding of Fact Num-
[fol. 160] ber 15 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 15. The said Finding of Fact is as follows:

* * * * * * *

11. The District Court erred in its Finding of Fact Number 16, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 16. The said Finding of Fact is as follows:

* * * * * * *

12. The District Court erred in its Finding of Fact Number 17, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 17. The said Finding of Fact is as follows:

* * * * * * *

13. The District Court erred in its Finding of Fact Num-
[fol. 161] ber 18 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 18. The said Finding of Fact is as follows:

* * * * * * *

14. The District Court erred in its Finding of Fact Number 19 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 19. The said Finding of Fact is as follows:

* * * * * * *

15. The District Court erred in its Finding of Fact Number 20 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 20. The said Finding of Fact is as follows:

* * * * * * *

16. The District Court erred in its Finding of Fact Number 21 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are
[fol. 162] as follows:

The Court erred in Finding of Fact Number 21. The said Finding of Fact is as follows:

* * * * * * *

17. The District Court erred in its Finding of Fact Number 26 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 26. The said Finding of Fact is as follows:

* * * * * * *

18. The District Court erred in its Finding of Fact Number 27 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 27. The said Finding of Fact is as follows:

* * * * * * *

[fol. 163] 19. The District Court erred in its Conclusion of Law Number 1 and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 1. The said Conclusion of Law is as follows:

* * * * * * *

20. The District Court erred in its Conclusion of Law Number 2, and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 2. The said Conclusion of Law is as follows:

* * * * * * *

21. The District Court erred in its Conclusion of Law Number 3 and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 3. The said Conclusion of Law is as follows:

* * * * * * *

22. The District Court erred in its Conclusion of Law Number 4 and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

[fols. 164 & 165] The Court erred in Conclusion of Law Number 4. The said Conclusion of Law is as follows:

* * * * * * *

23. The District Court erred in its Conclusion of Law Number 5 and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 5. The said Conclusion of Law is as follows:

* * * * * * *

Prayer for Reversal

For which errors the Plaintiff, Merchants Warehouse Company, prays that the said decree of the United States District Court for the Eastern District of Pennsylvania, dated November 19th, 1930, in the above entitled cause, be reversed and a decree rendered in favor of the said Plaintiff enjoining the said order of the Interstate Commerce Commission as therein prayed and for costs.

Allen S. Olmsted, 2nd, M. Hampton Todd, Attorneys for Petitioner.

[fols. 166-168] Citation, in usual form, showing service on Elmer B. Collins et al., filed November 19, 1930, omitted in printing.

[fol. 169] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

PETITION OF THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, THE PHILADELPHIA BOURSE, the GROCERS & IMPORTERS EXCHANGE, AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC., INTERVENORS IN BEHALF OF THE PLAINTIFF, FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Dec. 24, 1930

Petition for Appeal

Considering themselves aggrieved by the decision of the United States District Court for the Eastern District of Pennsylvania, the Intervenors therein in behalf of the Plaintiffs, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. hereby pray that an appeal be allowed to the Supreme Court of the United States herein.

[fols. 170 & 171] Assignment of Errors

The said Intervenors in behalf of the Plaintiff, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., adopt as their own the Assignment of Errors heretofore filed by the Plaintiff.

Prayer for Reversal

For the said errors, the Intervenors in behalf of the Plaintiff, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. pray that the said decree of the United States District Court for the Eastern

District of Pennsylvania, dated November 19th, 1930, in the above entitled cause, be reversed and a decree rendered in favor of the said Plaintiffs, enjoining the said order of the Interstate Commerce Commission as therein prayed.

(S.) Allen S. Olmsted, 2nd, Attorney for Petitioner.

We hereby assent to the joining of above named as parties appellant without the filing of an additional bond.

(S.) Elmer B. Collins, for the Attorney General of the United States. John J. Hickey, for Intervenors in behalf of the Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission.

[fols. 172-174] Citation, in usual form, showing service on Elmer B. Collins et al., filed December 26, 1930, omitted in printing.

[fol. 175] In United States District Court

No. 5781

[Title omitted]

Order Allowing Appeal—Filed Dec. 24, 1930

The Plaintiff in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided, and the said appeal having been allowed upon the filing of a bond in the sum of $2000 as security for costs, and the said bond having been filed by the said Plaintiff and The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., Intervenors in behalf of the Plaintiff, having likewise prayed for the

allowance of an appeal in this cause to the Supreme Court of the United States from a decree made and entered by [fols. 176 & 177] this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal to the Supreme Court of the United States from the United States District Court for the Eastern District of Pennsylvania, in this cause, be and the same is hereby allowed to the said The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. Intervenors in behalf of the Plaintiff, and the said Intervenors in behalf of the Plaintiff are hereby joined as parties appellant to the said appeal heretofore allowed to the Plaintiff.

Joseph Buffington, C. J.; J. W. Thompson, D. J.; O. B. Dickinson, D. J.

December 23, 1930.

[fols. 178 & 179] Bond on appeal for $2,000, approved and filed November 19, 1930, omitted in printing.

[fol. 180] IN UNITED STATES DISTRICT COURT

No. 5781

[Title omitted]

COPY OF NOTICE TO ATTORNEY GENERAL OF PENNA.—Filed Jan. 6, 1931

To the Attorney General of Pennsylvania:

Please take notice that The Merchants Warehouse Company, The Commercial Exchange of Philadelphia, The Philadelphia Board of Trade, The Philadelphia Bourse, Grocers' and Importers' Exchange of Philadelphia and

Association of Manufacturers' Representatives, Incorporated, have taken an appeal to the Supreme Court of the United States from the decree of the District Court for the Eastern District of Pennsylvania in the above entitled cause, dismissing the prayer of the Petitioner. Said prayer was to enjoin the order of the Interstate Commerce Commission in a certain proceeding entitled James Gallagher, et al. v. Pennsylvania Railroad Company, I. C. C. Docket No. 20968.

Very truly yours, (S.) Allen S. Olmsted, 2nd, Attorney for Appellants.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

Allen S. Olmsted, 2nd, being duly sworn, deposes and says that he served the notice, of which the above is a copy, upon the Attorney General of the State of Pennsylvania, by sending the same by United States mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pa.

[fol. 181] (S.) Allen S. Olmsted, 2nd.

Sworn and subscribed before me this 5th day of January, 1931. (S.) Marguerite Holmes, Notary Public. (Seal.)

[fol. 182] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

ORDER ALLOWING APPEAL—Filed Nov. 19, 1930

The plaintiff in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the United States District Court for the Eastern District of Pennsylvania in this cause, as provided by law, and it is further ordered that the clerk of the Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to [fols. 183 & 184] the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

It is Further Ordered that the said Order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company vs. Pennsylvania Railroad Company, be and it hereby is stayed and suspended pending the determination of this appeal by the Supreme Court of the United States, to which ruling an exception is allowed to the Respondents and each of them.

And It is Further Ordered that security for costs on appeal be fixed in the sum of $2,000.00.

J. W. Thompson, D. J.; Joseph Buffington, O. B. Dickinson.

[fol. 185] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

PETITION FOR CROSS-APPEAL BY UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, REX & COMPANY, INCORPORATED, JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY, AND INDUSTRIAL COLD STORAGE & WAREHOUSE COMPANY—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, feeling themselves aggrieved by the following,

the third, paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, viz:

"It is Further Ordered that the said Order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company vs. Pennsylvania Railroad Company, be and it hereby is stayed and suspended pending the determination of this appeal by the Supreme Court of the United States, to which ruling an exception is allowed to the respondents and each of them."

[fol. 185a] pray a cross-appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the foregoing paragraph erroneous are set forth in the assignment of error on file to which reference is hereby made.

They pray that a transcript of the record, pleadings, and papers on which the foregoing quoted order was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

John Lord O'Brian, Assistant to Attorney General, for United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

[fol. 186] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

ASSIGNMENT OF ERROR ON CROSS-APPEAL—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and

Industrial Cold Storage & Warehouse Company, intervening respondents, now come, by their respective counsel, and, in connection with their petition for cross-appeal, file the following assignment of error on which they will rely in their cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, entered November 19, 1930:

The District Court erred in staying and suspending the Commission's order in the matter of James Gallagher et al. v. Pennsylvania Railroad Company, pending determination of the appeal by the Supreme Court of the United States. [fol. 186a], Wherefore respondents and intervening respondents, and each of them, pray that said third paragraph of the order allowing appeal, entered November 19, 1930, be reversed, annulled, and set aside, with directions that the stay and suspension pending appeal shall be forthwith dissolved, and for such other and further orders as may be appropriate.

John Lord O'Brian, Assistant to the Attorney General, for United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

[fol. 187] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

[Title omitted]

ORDER ALLOWING CROSS-APPEAL.—Filed Jan. 7, 1931

In the above-entitled cause, United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, having made and

filed their petition praying a cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, and having also made and filed an assignment of error, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the cross-appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the [fol. 188] Clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said stay order was made and entered to the Supreme Court of the United States.

J. W. Thompson, J.

Jan. 7, 1931.

[fols. 189 & 190] Citation, in usual form, showing service on H. Edgar Barnes and Allen S. Olmsted, 2d, filed January 7, 1931, omitted in printing.

[fol. 191] In United States District Court

In Equity. No. 5781

[Title omitted]

Copy of Notice of Cross-appeal to the Attorney General of the State of Pennsylvania—Filed Jan. 7, 1931

To the Honorable, the Attorney General of the State of Pennsylvania, Harrisburg, Pa.:

You are hereby notified that the United States of America and the Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, in the above-entitled case, have taken a cross-appeal to the Supreme Court of the United States from the order of the

District Court made and entered November 19, 1930, which stayed and suspended the order of the Interstate Commerce Commission in the proceeding entitled James Gallagher et al. v. Pennsylvania Railroad Company, Docket No. 20968, made and entered December 28, 1929, pending determination of the appeal by the Supreme Court of the United States.

This notice is given to you pursuant to the provisions of [fol. 192] the Urgent Deficiencies Act of October 22, 1913, (ch. 32, 38 Stat. 208, 220, 221, U. S. C. Title 28, Sec. 47).

John Lord O'Brian, Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

State of Pennsylvania,
County of Philadelphia, ss:

J. Stanley Payne, being duly sworn according to law, deposes and says that he is Solicitor for the Interstate Commerce Commission and that on behalf of United States of America, the Interstate Commerce Commission, Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, he served Notice of Cross Appeal, of which the above is a copy, upon the Attorney General of the State of Pennsylvania, by sending the same by United States Mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pennsylvania, on January 7, 1931.

J. Stanley Payne (S.) J. Stanley Payne.

Sworn to and subscribed before me this 7 day of January, 1931. Clifford K. Cassel, Notary Public. Notary Public. My Commission Expires Jan. 16th, 1931.

[fol. 193] IN UNITED STATES DISTRICT COURT

December Term, 1929

No. 5781

December Term, 1929

No. 5789

December Term, 1929

No. 5791

[Titles omitted]

ORDER EXTENDING TIME FOR DOCKETING CASES—Filed Dec. 17, 1930

For good cause appearing and upon consent of counsel for all parties the time for docketing the above case and filing the record thereof with the Clerk of the U. S. Supreme Court is hereby extended to and including December 31, 1930.

Joseph Buffington, Circuit Judge. J. W. Thompson, District Judge. O. B. Dickinson, District Judge.

[fol. 194] Consenting to:

M. Hampton Todd, Attorney for Merchants Warehouse Company, Appellant. H. Edgar Barnes, Attorney for the Pennsylvania Warehousing & Safe Deposit Company, Appellant. John P. Connelly, Attorney for the Philadelphia Warehousing & Cold Storage Company, Appellant. Allen S. Olmsted, 2nd, Attorney for Commercial Exchange of Philadelphia et al., Appellants. Elmer B. Collins Special Assistant to the Attorney General, for the United States, Appellee. J. Stanley Payne, Attorney for Interstate Commerce Commission, Appellee. John J. Hickey, Attorney for Intervening Defendants, Appellees.

[fol. 195] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

In Equity. No. 5789

In Equity. No. 5791

[Titles omitted]

ORDER EXTENDING TIME FOR DOCKETING CASES—Filed Dec. 30, 1930

For good cause and upon the stipulation of counsel for [fol. 196] all parties, the time for docketing the above cases and filing the records thereof with the Clerk of the Supreme Court of the United States is hereby enlarged to and including January 10, 1931.

(Signed) Joseph Buffington, Circuit Judge.
(Signed) J. W. Thompson, District Judge.
(Signed) O. W. Dickinson, District Judge. J. Stanley Payne, Counsel for Interstate Commerce Commission. Allen S. Olmsted, 2nd, Counsel for Merchants Warehouse Company.

[fol. 197] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY, Walter A. Bailey, Terminal Warehouse Company, Complainants,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

FORMAL COMPLAINT—Filed April 26, 1928

The complaint of the above named complainants respectfully shows:

I

(a) That at all times mentioned herein James Gallagher, complainant herein, trading and doing business under the name and style "Gallagher's Warehouses," had a general office at No. 50 South Third Street in the city of Philadelphia in the state of Pennsylvania and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

(b) That at said times the Northeastern Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Sedgely and Erie Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and [fol. 198] occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

(c) That at said times Walter A. Bailey, complainant herein, trading and doing business under the name and style "Bailey Warehouses," had a general office at Delaware Avenue and South Streets in said Philadelphia and at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

(d) That at said times the Terminal Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Delaware and Fairmount Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

II

That at said times the Pennsylvania Railroad Company, the defendant, was a corporation organized under the laws of Pennsylvania and was a common carrier engaged in the

transportation of property wholly by railroad, for hire, between said Philadelphia, a point on its railway route, and various points outside the state of Pennsylvania, and, as such common carrier, was subject to the provisions of the Interstate Commerce Act.

III

(a) That at said times the Merchants Warehouse Company, Inc. was a corporation organized under the laws of said Pennsylvania; had a general office at No. 10 Chestnut [fol. 199] in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia and competed with each of the complainants in carrying on its said warehouse business.

(b) That at said times The Quaker City Cold Storage Company, Inc. was a corporation organized and existing under the laws of Pennsylvania; had a general office at No. 211 Callowhill Street in said Philadelphia; occupied and used warehouses and warehouse facilities in said Philadelphia; conducted a warehouse business at said Philadelphia and in the conduct of that business competed with complainants.

(c) That, for convenience, said Merchants Warehouse Company and said Quaker City Cold Storage Company, Inc. collectively are referred to herein as the subsidized warehouse companies.

IV

(a) That during the period of time from April 27, 1926 to the date of the filing of this complaint, herein called the period of two years, each of the complainants and said subsidized warehouse companies in the conduct of his or its warehouse business, shipped numerous carloads, and smaller lots of property outbound from their warehouses in said Philadelphia to various points outside the state of Pennsylvania and tendered said property to defendant for transportation.

(b) That during said period of two years each of the complainants and said subsidized warehouse companies, in the conduct of his or its warehouse business, caused numerous carloads, and smaller lots, of property to be shipped

from various points outside the state of Pennsylvania to said Philadelphia and to be delivered to them by the de-
[fol. 200] fendant at their warehouses in said Philadelphia.

(c) That during said period the defendant and its connecting lines transported said property, for hire, in interstate commerce between said warehouses in Philadelphia and said points outside the state of Pennsylvania.

(d) That said property which defendant transported for complainants was similar to the property which defendant transported for said subsidized warehouse companies and the defendant performed said transportation service contemporaneously and under substantially similar circumstances and conditions.

V

(a) That at various times during said period of two years the defendant gave allowances of 50 cents per ton and of other amounts per ton to said subsidized warehouse companies out of its published freight rates for said transportation of said property to and from warehouses of said subsidized warehouse companies.

(b) That certain of said allowances are referred to in defendant's published tariff bearing the number G. O. ICC No. 14400.

VI

(a) That at the times the defendant transported the property, as alleged in Paragraph IV above, the defendant charged, collected and received its filed and published rates applicable to said transportation service and, later, at various times, the defendant, by the means of the allowances, special rates, rebates, drawbacks and concessions, as alleged in Paragraph V above, which were devices used for the purpose of facilitating violations of Sections 2 and 3 of the Interstate Commerce Act and Section 1 of the Elkins
[fol. 201] Act, refunded and remitted to said subsidized warehouse companies part of the defendant's said filed and published rates which were lawfully applicable to said transportation of property performed by defendant for said subsidized warehouse companies.

(b) That through and by the means of the said devices the defendant transported said property for said subsi-

dized warehouse companies at net rates which were materially less than its filed and published rates which it charged and collected for similar transportation of property for complainants.

VII

That by reason of the facts stated in the foregoing paragraphs complainants have been subjected to the payment of rates and charges for transportation which were, when exacted, and still are unjustly discriminatory in violation of Section 2 of said Act, and, unduly preferential of said subsidized warehouse companies, competitors of complainants, and unduly prejudicial to complainants in violation of Section 3 of said Act. That each of the complainants has been injured thereby to his or its damage in a large sum of money.

VIII

Wherefore complainants pray that defendant may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant to cease and desist from the aforesaid violations of said Act and also pay to each of complainants by way of reparation for said damage, and, for additional damage arising from similar unlawful conduct of defendant during the prosecution of this case, such sum of money as, in view of the evidence to be adduced herein, the Commission shall [fol. 202] determine that each of the complainants is entitled to as an award of damages, with interest, under the provisions of said Act for violation thereof and that such other and further order or orders be made as the Commission may consider proper in the premises.

James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, Complainants, by John J. Hickey, 800 Southern Building, Washington, D. C., Attorney for Complainants.

Dated at Washington, D. C., April 27, 1928.

[fol. 203] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub. No. 1

WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

FORMAL COMPLAINT—Filed April 26, 1928

The complaint of the above named complainants respectfully shows:

I

(a) That at all times mentioned herein Walter A. Bailey, complainant herein, trading and doing business under the name and style "Bailey Warehouses," had a general office at Delaware Avenue and South Streets in the city of Philadelphia in the state of Pennsylvania and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

[fol. 204] (b) That at all said times the Terminal Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Delaware and Fairmount Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

II

That at said times The Baltimore and Ohio Railroad Company, the defendant, was a duly organized corporation

and was a common carrier engaged in the transportation of property wholly by railroad, for hire, between said Philadelphia, a point on its railway route, and various points outside the state of Pennsylvania and, as such common carrier, was subject to the provisions of the Interstate Commerce Act.

III

That at said times The Pennsylvania Warehousing and Safe Deposit Company, herein called the subsidized warehouse, was a duly organized corporation; had a general office at No. 113 South Third Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia and competed with complainants in carrying on its said warehouse business.

IV

(a) That during the period of time from April 27, 1926 to the date of the filing of this complaint, herein called the period of two years, the complainants and said subsidized [fol. 205] warehouse shipped numerous carloads and smaller lots of property, outbound from their warehouses in said Philadelphia to various points outside the state of Pennsylvania and tendered said property to defendant for transportation.

(b) That during said period of two years the complainants and said subsidized warehouse caused numerous carloads and smaller lots of property to be shipped from various points outside the state of Pennsylvania to said Philadelphia and to be delivered to them by the defendant at their warehouses in said Philadelphia.

(c) That during said period the defendant and its connecting lines transported said property, for hire, in interstate commerce between said warehouses in Philadelphia and said points outside the state of Pennsylvania.

(d) That said property which defendant transported for complainants was similar to the property which defendant transported for said subsidized warehouse and further, the defendant performed said transportation service contemporaneously and under substantially similar circumstances and conditions.

V

That at various times during said period of two years the defendant gave allowances of Fifty Cents per ton, Thirty-five Cents per ton and of other amounts per ton to said subsidized warehouse out of its published freight rates for said transportation of said property to and from warehouses of said subsidized warehouse.

VI

(a) That at the times the defendant transported the property, as alleged in Paragraph V above, the defendant charged, collected and received its filed and published rates [fol. 206] applicable to said transportation service and, later, at various times, the defendant, by the means of the allowances, special rates, rebates, and drawbacks, as alleged in Paragraph V above, which were devices used for the purpose of facilitating violations of Sections 2 and 3 of the Interstate Commerce Act, refunded and remitted to said subsidized warehouse part of the defendant's said filed and published rates which were lawfully applicable to, and for, said transportation of property performed by defendant for said subsidized warehouse.

(b) That through and by the means of the said devices the defendant transported said property for said subsidized warehouse at net rates which were materially less than its filed and published rates which it charged and collected for similar transportation of property for complainants.

VII

That by reason of the facts stated in the foregoing paragraphs complainants have been subjected to the payment of rates and charges for transportation which were, when exacted, and still are unjustly discriminatory in violation of Section 2 of said Act, and, unduly preferential of said subsidized warehouse, competitor of complainants, and unduly prejudicial to complainants in violation of Section 3 of said Act. That each of the complainants has been injured thereby to his or its damage in a large sum of money.

VIII

Wherefore complainants pray that defendant may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant to cease and desist from the aforesaid violations [fol. 207] of said Act and also pay to each of complainants by way of reparation for said damage, and, for additional damage arising from similar unlawful conduct of defendant during the prosecution of this case, such sum of money as, in view of the evidence to be adduced herein, the Commission shall determine that each of the complainants is entitled to as an award of damages, with interest, under the provisions of said Act for violation thereof and that such other and further order or orders be made as the Commission may consider proper in the premises.

Walter A. Bailey, Terminal Warehouse Company, Complainants, by John J. Hickey, 800 Southern Building, Washington, D. C., Attorney for Complainants.

Dated at Washington, D. C., April 27, 1928.

[fol. 208] [File endorsement omitted]

BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub No. 2

REX & COMPANY, INC., JAMES GALLAGHER, NORTHEASTERN Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, Industrial Cold Storage and Warehouse Company, Complainants,

vs.

READING COMPANY, Defendant

FORMAL COMPLAINT—Filed April 26, 1928

The complaint of the above named complainants respectfully shows:

I.

(a) That at all times mentioned herein Rex & Company, Inc. complainant herein, was a corporation organized and existing under the laws of the state of Pennsylvania; had a general office at Philip Street near York Street in the City of Philadelphia in said state and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

[fol. 209] (b) That at said times James Gallagher, complainant herein, trading and doing business under the name and style "Gallagher's Warehouses," had a general office at No. 50 South Third Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

(c) That at said times the Northeastern Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Sedgely and Erie Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

(d) That at said times Walter A. Bailey, complainant herein, trading and doing business under the name and style "Bailey Warehouses," had a general office at Delaware Avenue and South Streets in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on his said warehouse business.

(e) That at said times the Industrial Cold Storage and Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at No. 1905 North American Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used ware-

houses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

[fol. 210] (f) That at said times the Terminal Warehouse Company, complainant herein, was a corporation organized and existing under the laws of said Pennsylvania; had a general office at Delaware and Fairmount Avenues in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia in carrying on its said warehouse business.

II

That at said times Reading Company, the defendant, was a corporation organized under the laws of said Pennsylvania and was a common carrier engaged in the transportation of property wholly by railroad, for hire, between said Philadelphia, a point on its railway route, and various points outside the state of Pennsylvania and, as such common carrier, was subject to the provisions of the Interstate Commerce Act.

III

(a) That at said times The Pennsylvania Warehousing and Safe Deposit Company, was a corporation organized under the laws of said Pennsylvania; had a general office at No. 113 South Third Street in said Philadelphia and, at said Philadelphia, conducted a warehouse business and occupied and used warehouses and warehouse facilities at several locations in said Philadelphia and competed with complainants in carrying on its said warehouse business.

(b) That at said times the Philadelphia Warehousing and Cold Storage Company, a corporation of the state of Pennsylvania, had a general office at Delaware Avenue and [fol. 211] North Street in said Philadelphia; occupied and used warehouses and warehouse facilities located in said city; conducted a warehouse business in said Philadelphia and, in the conduct of that business, competed with the complainants.

(c) That, for convenience, said Pennsylvania Warehousing and Safe Deposit Company and said Philadelphia

Warehousing and Cold Storage Company collectively are called the subsidized warehouse companies herein.

IV

(a) That during the period of time from April 27, 1926 to the date of the filing of this complaint, herein called the period of two years, the complainants and said subsidized warehouse companies shipped numerous carloads and smaller lots of property outbound from their warehouses in said Philadelphia to various points outside the state of Pennsylvania and tendered said property to defendant for transportation.

(b) That during said period of two years the complainants and said subsidized warehouse companies caused numerous carloads and smaller lots of property to be shipped from various points outside the state of Pennsylvania to said Philadelphia and to be delivered to them by the defendant at their warehouses in said Philadelphia.

(c) That during said period the defendant and its connecting lines transported said property, for hire, in interstate commerce between said warehouses in Philadelphia and said points outside the state of Pennsylvania.

(d) That said property which defendant transported for complainants was similar to the property which defendant [fol. 212] transported for said subsidized warehouse companies and the defendant performed said transportation service contemporaneously and under substantially similar circumstances and conditions.

V

(a) That at various times during said period of two years the defendant gave allowances of Fifty Cents per ton, Thirty-five Cents per ton and of other amounts per ton to said subsidized warehouse companies out of its published freight rates for said transportation of said property to and from warehouses of said subsidized warehouse companies.

VI

(a) That at the times the defendant transported the property, as alleged in Paragraph IV above, the defendant

charged, collected and received its filed and published rates applicable to said transportation service and, later, at various times, the defendant, by the means of the allowances, special rates, rebates, and drawbacks, as alleged in Paragraph V above, which were devices used for the purpose of facilitating violations of Sections 2 and 3 of the Interstate Commerce Act, refunded and remitted to said subsidized warehouse companies part of the defendant's said filed and published rates which were lawfully applicable to, and for, said transportation of property performed by defendant for said subsidized warehouse companies.

(b). That through and by the means of the said devices the defendant transported said property for said subsidized warehouse companies at net rates which were materially less than its filed and published rates which it charged and collected for similar transportation of property for complainants.

[fol. 213] VII

That by reason of the facts stated in the foregoing paragraphs complainants have been subjected to the payment of rates and charges for transportation which were, when exacted, and still are unjustly discriminatory in violation of Section 2 of said Act, and, unduly preferential of said subsidized warehouse companies, competitors of complainants, and unduly prejudicial to complainants, in violation of Section 3 of said Act. That each of the complainants has been injured thereby to his or its damage in a large sum of money.

VIII

Wherefore complainants pray that defendant may be required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendant to cease and desist from the aforesaid violations of said Act and also pay to each of complainants by way of reparation for said damage, and, for additionl damage arising from similar unlawful conduct of defendant during the prosecution of this case, such sum of money as, in view of the evidence to be adduced herein, the Commission shall determine that each of the complainants is entitled to as

an award of damages, with interest, under the provisions of said Act for violation thereof and that such other and further order or orders be made as the Commission may consider proper in the premises.

[fol. 214] Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Industrial Cold Storage and Warehouse Company, Terminal Warehouse Company, Complainants, by John J. Hickey, 800 Southern Building, Washington, D. C., Attorney for Complainants.

Dated at Washington, D. C., April 27, 1928.

[fol. 215] Filed Jun. 1, 1928, Interstate Commerce Commission

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub No. 1

WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, Complainants,

v.

THE BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

ANSWER OF THE BALTIMORE AND OHIO RAILROAD COMPANY

I. Answering the allegations contained in paragraph I of the complaint, this defendant states that it is not advised with respect thereto.

II. Answering the allegations contained in paragraph II of the complaint, this defendant admits that it is a common carrier, and that, as such, it is subject to the provisions of the Interstate Commerce Act, and the acts amendatory thereof and supplementary thereto.

III. Answering the allegations contained in paragraphs III and IV of the complaint, this defendant states that it is not fully advised with respect thereto, but it specifically denies the implication that The Pennsylvania Warehousing and Safe Deposit Company is a subsidized warehouse.

IV. This defendant denies each and every allegation contained in paragraph V of the complaint.

V. Answering the allegations contained in paragraph VI of the complaint, this defendant admits that on any property which it transported, it charged, collected and received its filed and published rates lawfully on file with the Interstate Commerce Commission, but it denies each and every other allegation contained in said paragraph.

VI. This defendant denies each and every allegation contained in paragraph VII of the complaint.

Wherefore, having answered fully, this defendant asks that the complaint herein be dismissed.

The Baltimore and Ohio Railroad Company, by Archibald Fries, Vice-President. Charles R. Webbers, Attorney for the Baltimore and Ohio Railroad Company.

[fol. 216] Filed Jun. 1, 1928, Interstate Commerce Commission

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER et al.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

DEFENDANT'S ANSWER

The above named defendant, for answer to the complaint filed in this proceeding, respectfully states:

1. This defendant is without sufficient information to enable it to admit or deny the allegations of paragraph 1 of the complaint, and accordingly prays that, so far as the same be deemed material, the complainant be required to make due proof thereof.

2. This defendant admits that it is a common carrier, engaged in part in interstate commerce, and that as to

such commerce it is subject to the Act to Regulate Commerce, approved February 4, 1887, and the acts amendatory thereof and supplementary thereto, so far as the same are constitutional and enforceable.

3. This defendant is without sufficient information to enable it to admit or deny the allegations of paragraph 3 of the complaint, — accordingly prays that, so far as the same be deemed material, the complainant be required to make due proof thereof.

4. The averments of paragraph 4 of the complaint are severally denied.

5. Answering the averments of paragraph 5 of the com- [fol. 217] plaint, --ave is craved, for greater certainty, to refer to the tariff therein referred to.

6. The remaining allegations of the complaint are severally denied.

Wherefore the defendant prays that the complaint filed in this proceeding be dismissed.

The Pennsylvania Railroad Company, by V. P. Sumerfield, General Freight Agent. Henry Wolf Bikle, of Counsel.

[fol. 218] Filed Jun. 4, 1928, Interstate Commerce Commission

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968, Sub. No. 2

REX & COMPANY, INC., et al.

vs.

READING COMPANY

Reading Company, the defendant named in the above entitled proceeding, for its answer respectfully shows.

I. This defendant has no information with respect to the averments of paragraph I but believes same to be substantially correct.

II. This defendant admits that it is a common carrier, to some extent engaged, with its connections, in the transportation of passengers and property between points in different States of the United States, and that, as such common carrier, it is subject to the provisions of the Act to Regulate Commerce, approved February 4th, 1887, and those of the Acts amendatory thereof or supplementary thereto, insofar as such provisions are constitutional and legal.

III. Sub paragraphs (a) and (b) are believed to be correct but it is denied that said Pennsylvania Warehousing and Safe Deposit Company and said Philadelphia Warehouse and Cold Storage Company are "subsidized" by this defendant.

IV. It is denied that the said Pennsylvania Warehousing and Safe Deposit Company and said Philadelphia Warehouse and Cold Storage Company are "subsidized" by this defendant. This defendant is without sufficient information to enable it to admit or deny the remaining averments of the corresponding paragraph of the complaint and demands due proof thereof.

V. It is denied that this defendant gave any allowance out of its published freight rates to the warehouse companies referred to in the corresponding paragraph of the complaint and it is further denied that the said warehouse companies were or are "subsidized" by this defendant. On the contrary it is averred that while payments have been made by this defendant to the said warehouse companies in connection with traffic handled to and from their warehouses, said payments were not subsidies but covered service rendered and facilities provided by the warehouse companies for this defendant in connection with the handling of such traffic.

VI, VII, VIII. The averments of the corresponding paragraphs are denied and it is further denied that complainant is entitled to the order or orders prayed for or to reparation. Therefore defendant prays that the said complaint be dismissed.

Reading Company, by H. C. Stauffer, General Freight Traffic Manager. W. L. Kinter, Counsel.

Philadelphia, Pa., June 2, 1928.

[fols. 219 & 220] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

[Title omitted]

PETITION OF THE MERCHANTS' WAREHOUSE COMPANY FOR LEAVE TO INTERVENE

And now, June 12th, 1928, comes the petitioner, the Merchants' Warehouse Company and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and prays leave to intervene in and become a party to said proceeding.

That your petitioner is a corporation duly organized under the laws of the State of Pennsylvania with its principal office at No. 10 Chestnut Street in the City of Philadelphia and State of Pennsylvania.

[fol. 221] That under the sixth paragraph of the formal complaint filed in the above matter your petitioner is charged with having accepted and received from the Pennsylvania Railroad Company, the defendant, certain allowances, special rates, rebates, drawbacks and concessions made in violation of Sections 2 and 3 of the Interstate Commerce Act and Section 1 of the Elkins Act which charges are denied.

Both in this respect and in other respects as appears on the face of the complaint, this petitioner has an interest in this proceeding.

Wherefore your petitioner prays leave to intervene as a party to these proceedings and to file an answer to the complaint with the right to have notice of and appear at any hearings or meetings in connection with this matter and to take testimony, produce and cross-examine witnesses and be heard upon brief or oral argument in the matter.

Merchants' Warehouse Company, (Sgd.) George M. Richardson, Treasurer. (Sgd.) M. Hampton Todd, Attorney for Petitioner.

[fol. 222] BEFORE INTERSTATE COMMERCE COMMISSION

No. 20968

[Title omitted]

ORDER PERMITTING INTERVENTION—June 27, 1928

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Merchants' Warehouse Company;

It is ordered, That the said Merchants' Warehouse Company be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainants and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 223] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY, WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

THE PENNSYLVANIA RAILROAD COMPANY, Defendant

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Millers' National Federation, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and

desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That petitioner is a voluntary association formed for the purpose of promoting the welfare of wheat millers throughout the United States; that its membership is composed of millers located in 29 states of the United States, and its members produce approximately sixty-five per cent of all the wheat flour milled in the country.

[fol. 224]

II

That your petitioner is informed and believes that the case herein presented to this Honorable Commission involves the legality and propriety of certain practices, rules and regulations of the defendants relating to the transportation of freight in car loads to and from warehouses located in the city of Philadelphia; that the members of the Millers' National Federation, petitioner herein, annually ship large quantities of flour from various points in the United States to the City of Philadelphia, and have a vital interest in the matters in controversy in this proceeding, because of the fact that said practices, rules and regulations of the carriers operate to the great detriment and disadvantage of the members of your petitioner.

Wherefore, said Millers' National Federation, petitioner herein, prays leave to intervene on behalf of the complainants in this proceeding as a party thereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in per-
[fol. 225] son or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Chicago, Illinois, September 15, 1928.

Millers' National Federation, by Sydney Anderson, Its President, 307 N. Michigan Avenue, Chicago, Ill. Herbert J. Campbell, Attorney, 105 South LaSalle St., Chicago, Ill.

[fols. 226 & 227] BEFORE INTERSTATE COMMERCE COMMISSION

No. 20968

[Title omitted]

ORDER PERMITTING INTERVENTION—Sept. 17, 1928

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Millers' National Federation;

It is ordered, That the said Millers' National Federation be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainants and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 228] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub 1

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Millers' National Federation, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That petitioner is a voluntary association formed for the purpose of promoting the welfare of wheat millers throughout the United States; that its membership is composed of millers located in 29 states of the United States, and its members produce approximately sixty-five per cent of all the wheat flour milled in the country.

II

That your petitioner is informed and believes that the [fol. 229] case herein presented to this honorable Commission involves the legality and propriety of certain practices, rules and regulations of the defendants relating to the transportation of freight in car loads to and from warehouses located in the City of Philadelphia; that the members of the Millers' National Federation, petitioner herein, annually ship large quantities of flour from various points in the United States to the City of Philadelphia, and have a vital interest in the matters in controversy in this proceeding, because of the fact that said practices, rules and regulations of the carriers operate to the great detriment and disadvantage of the members of your petitioner.

Wherefore said Millers' National Federation, petitioner herein, prays leave to intervene on behalf of the complainants in this proceeding as a party thereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Chicago, Illinois, September 15, 1928.

Millers' National Federation, by Sydney Anderson, Its President, 307 N. Michigan Avenue, Chicago, Ill. Herbert J. Campbell, Attorney, 105 S. LaSalle St., Chicago, Ill.

[fol. 230] BEFORE INTERSTATE COMMERCE COMMISSION

No. 20968, Sub 1

[Title omitted]

ORDER PERMITTING INTERVENTION

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Millers' National Federation;

It is ordered, That the said Millers' National Federation be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainants and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 231] BEFORE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub 2

[Title omitted]

PETITION FOR LEAVE TO INTERVENE

Comes now your petitioner, Millers' National Federation, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding, and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That petitioner is a voluntary association formed for the purpose of promoting the welfare of wheat millers throughout the United States; that its membership is composed of millers located in 29 states of the United States, and its members produce approximately sixty-five per cent of all the wheat flour milled in the country.

[fol. 232]

II

That your petitioner is informed and believes that the case herein presented to this honorable Commission involves the legality and propriety of certain practices, rules and regulations of the defendants relating to the transportation of freight in car loads to and from warehouses located in the City of Philadelphia; that the members of the Millers' National Federation, petitioner herein, annually ship large quantities of flour from various points in the United States to the City of Philadelphia, and have a vital interest in the matters in controversy in this proceeding, because of the fact that said practices, rules and regulations of the carriers operate to the great detriment and disadvantage of the members of your petitioner.

Wherefore said Millers' National Federation, petitioner herein, prays leave to intervene on behalf of the complainants in this proceeding as a party thereto with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses, and be heard in person or by counsel upon brief and at the oral argument, if oral argument is granted.

Dated at Chicago, Illinois, September 15, 1928.

Millers' National Federation, by Sydney Anderson, Its President, 307 N. Michigan Avenue, Chicago, Ill. Herbert J. Campbell, Herbert J. Campbell, Attorney, 105 S. LaSalle St., Chicago, Ill.

[fol. 233] BEFORE INTERSTATE COMMERCE COMMISSION

No. 20968, Sub. 2

[Title omitted]

ORDER PERMITTING INTERVENTION—Sept. 17, 1928

Upon consideration of the record in the above-entitled proceeding and application filed on behalf of Millers' National Federation;

It is ordered, That the said Millers' National Federation, be, and it is hereby, permitted to intervene and be treated as a party hereto, with the right to have notice of and appear at the taking of testimony, produce and cross-examine witnesses and be heard in brief and on oral argument, if oral argument is heard; provided, however, that the permission to intervene herein granted shall not be construed to allow intervenor to introduce evidence which will unduly broaden the issues raised in the complaint;

It is further ordered, That a copy of the intervening petition be served upon complainants and defendant; and that a copy of this order be served upon each of the parties to this case.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 234] Recd. at Hearing 7-30-28. R. M. B.

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. No. 20968.

JAMES GALLAGHER et al., Complainants,

vs.

PENNSYLVANIA RAILROAD COMPANY, Defendant

I. C. C. No. 20,968 (Sub. No. 1)

WALTER A. BAILEY AND TERMINAL WAREHOUSE COMPANY, Plaintiffs,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

I. C. C. No. 20,968 (Sub. No. 2)

REX AND COMPANY, INC., et al., Complainants,

vs.

READING COMPANY, Defendant

PETITION OF THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, THE PHILADELPHIA BOURSE, THE GROCERS & IMPORTERS EXCHANGE, AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC.

Allen S. Olmsted, 3rd, 2300 Packard Bldg., William A. Glasgow, Jr., 1018 Real Estate Trust Bldg., Philadelphia, Pa., Attorneys for Petitioners.

[fol. 235] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. No. 20968.

JAMES GALLAGHER et al., Complainants,

vs.

PENNSYLVANIA RAILROAD COMPANY, Defendant

I. C. C. No. 20,968 (Sub. No. 1)

WALTER A. BAILEY AND TERMINAL WAREHOUSE COMPANY, Plaintiffs,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

I. C. C. No. 20,968 (Sub. No. 2)

REX AND COMPANY, INC., et al., Complainants,

vs.

READING COMPANY, Defendant

PETITION OF THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, THE PHILADELPHIA BOURSE, THE GROCERS & IMPORTERS EXCHANGE, AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC.

And now, this 24th day of July, 1928, come the petitioners above named, and represent that they, and each of them,

[fol. 236] are incorporated under the laws of the State of Pennsylvania, and that they, and each of them, were incorporated for the purpose of looking after, protecting and advancing the commercial and business interests of the members of each of said corporations and the business interests of the City of Philadelphia, and that each of said complainants, and the members thereof, who are engaged in a commercial business in the City of Philadelphia and are shippers and receivers of freight over the several railroads, defendants in the above cases, are vitally interested in the matter in controversy in the above entitled proceedings and desire to be permitted to intervene as parties defendant in the above proceedings for the protection of their, and each of their, interests, and of the business interests of their members as shippers and receivers of freight over the railroads aforesaid in the City of Philadelphia.

Petitioners, and each of them, show that the arrangement for the handling of freight through the warehouses in the City of Philadelphia, complained of in the above proceedings, has been in effect for many years, and that this arrangement between the warehouse companies and the railroads has added greatly to economy, convenience and expedition in the handling of freight, both the shipping and receiving thereof, and any interference therewith would be greatly prejudicial to the business interest of the City of Philadelphia, to each of petitioners and to members of petitioner companies; and petitioners, and each of them, deny that the arrangement between the railroad companies and the warehouse companies, complained of in the above proceeding, is in violation of the Interstate Commerce Act, or any of the Sections or Provisions thereof or the Elkins Act or any other law.

Petitioners therefore show that they, and each of them, are vitally interested in the proceedings above mentioned. [fol. 237] Wherefore, petitioners, and each of them, pray leave to intervene as a party defendant to the above proceedings, with the right to have notice of, and appear at, any hearings or meetings in connection with the above matter, and to appear by counsel and to offer such testimony as they may be advised is pertinent and proper, and to be

permitted to cross-examine witnesses, and to be heard upon brief or oral argument, as the case may be.

The Commercial Exchange of Philadelphia, by Herbert J. Horan, President. The Philadelphia Board of Trade, by Wm. M. Coates, President. The Philadelphia Bourse, by Phillip Godley, Vice President. The Grocers and Importers Exchange, by Robert L. Montgomery, President. The Association of Manufacturers Representatives, Inc., by Alfred A. O'Grady, V. P. Allen S. Olmsted, 3rd, William A. Glasgow, Jr., Attorneys for Petitioners.

Wm. A. Glasgow, Jr.

[fol. 238] Recd. at Hearing 7-30-28. R. M. B.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub. No. 2

REX AND COMPANY, INC., et al., Complainant-,

vs.

READING COMPANY, Defendant

PETITION OF THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY FOR LEAVE TO INTERVENE

H. Edgar Barnes, 518 Real Estate Trust Building, Philadelphia, Pennsylvania.

[fol. 239] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968, Sub. No. 2

REX AND COMPANY, INC., et al., Complainant-,

vs.

READING COMPANY, Defendant

PETITION OF PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY FOR LEAVE TO INTERVENE.

Comes now your Petitioner, Pennsylvania Warehousing and Safe Deposit Company, and respectfully represents

that it has an interest in the matters in controversy in the above entitled proceeding and prays leave to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I. That your Petitioner is a Corporation organized and existing under the Laws of the State of Pennsylvania and conducts a warehousing business in the City of Phila- [fol. 240] delphia, Pennsylvania, having its principal office at No. 113 South Third Street, in the said city.

II. That the formal complaint filed in the above matter alleges that your Petitioner has accepted and received from the Reading Company, the Defendant, certain unlawful allowances, special rates, rebates, drawbacks and concessions made in violation of Sections 2 and 3 of the Interstate Commerce Act, which charges are denied.

III. Your Petitioner, therefore, respectfully submits that in respect to said allegations and in other respects as appear on the face of the Complaint, it has a direct interest in this proceeding.

Wherefore your Petitioner prays leave to intervene as a party to these proceedings with the right to file an answer to the Complaint, to have notice of and appear at any hearings or meetings in connection with this matter, to take testimony to produce and cross-examine witnesses and to be heard by Counsel upon brief or at oral argument if oral argument be granted, and to file exceptions to any report if exceptions appear to your Petitioner to be to its interest.

Pennsylvania Warehousing and Safe Deposit Company, by Ralph Earle, President, 113 South Third Street, Philadelphia, Pennsylvania. H. Edgar Barnes, Attorney for Petitioner, 518 Real Estate Trust Building, Philadelphia, Pennsylvania.

Jul. 25, 1928.

[fol. 241] Recd. at Hearing 7-30-28. R. M. B.

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968, Sub. No. 2

REX AND COMPANY, INC., et al.

vs.

READING COMPANY

PETITION OF PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY FOR LEAVE TO INTERVENE

Comes now your petitioner, Philadelphia Warehousing and Cold Storage Company, and respectfully represents that it has an interest in the matters in controversy in the above entitled proceeding and desires to intervene in and become a party to said proceeding, and for grounds of the proposed intervention says:

I

That your petitioner is a corporation organized and existing under the Laws of the State of Pennsylvania, and conducts a warehousing business in the City of Philadelphia, Penna., having its main office at Delaware Avenue and Noble Street, in the said City.

[fol. 242]

II

That the complaint filed in the above proceeding alleges that your petitioner is receiving certain unlawful allowances from Reading Company in connection with traffic handled from and to its warehouses.

III

Your petitioner, therefore, respectfully submits that in view of the issues raised by the complaint, it has a direct interest therein.

Wherefore Philadelphia Warehousing and Cold Storage Company prays leave to intervene and be considered as a party hereto with the right to have notice of and appear at the taking of testimony to produce and cross-examine wit-

nesses, to be heard by counsel upon brief and at the oral argument, if oral argument is granted, and to file exceptions to the Examiner's proposed report if exceptions appear to the petitioner to be to its interest.

Dated at Philadelphia this 24 day of July, 19—.

Philadelphia Warehousing and Cold Storage Company, by J. A. Geisz, Delaware Avenue and Noble Street, Philadelphia, Pa. John P. Connelly, Attorney for Petitioner, 1526 Land Title Bldg., Philadelphia, Penna.

[fol. 242a] BEFORE INTERSTATE COMMERCE COMMISSION

No. 20968[1]

JAMES GALLAGHER ET AL.

v.

PENNSYLVANIA RAILROAD COMPANY

Submitted November 27, 1929. Decided December 28, 1929

Practice of defendants in making allowances to certain warehouse companies in connection with the loading and unloading of package freight at Philadelphia, Pa., and refusing to make such allowances to complainants, found unjustly discriminatory and unduly prejudicial. Defendants required (1) to cease and desist from publishing or making such allowances, and (2) to cancel their tariff provisions which make the warehouses of the aforesaid companies a part of their respective station facilities at Philadelphia. Reparation denied.

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[1]This report also embraces No. 20968 (Sub-No. 1), Walter A. Bailey et al. v. Baltimore & Ohio Railroad Company; and No. 20968 (Sub-No. 2), Rex & Company, Incorporated, et al. v. Reading Company.

John J. Hickey for complainants.

Herbert J. Campbell for Millers' National Federation, intervener.

Henry Wolf Biklé, Charles R. Webber, W. I. Woodcock, jr., and W. L. Kinter for defendants.

Wm. A. Glasgow, jr., and M. Hampton Todd for Merchants' Warehouse Company; Winfred M. Stilwell and H. Edgar Barnes for Pennsylvania Warehousing & Safe Deposit Company; John P. Connelly for Philadelphia Warehousing & Cold Storage Company; and Allen S. Olmsted, 2d, and Wm. A. Glasgow, jr., for Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange, Philadelphia Board of Trade, Philadelphia Bourse, and Association of Manufacturers' Representatives, Incorporated, interveners.

Division 3, Commissioners Aitchison, Taylor, and Porter

REPORT OF THE COMMISSION

PORTER, Commissioner:

These cases present practically identical issues, were heard together, and will be dealt with in one report. Exceptions were filed to the report proposed by the examiner, and the issues were orally argued.

Complainants, operators of warehouses at Philadelphia, Pa., by complaints filed April 26, 1928, allege that the practice of defendants in making cash allowances to certain Philadelphia warehouse companies,[2] hereinafter referred

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[2] Complainants in No. 20968 name the Merchants' Warehouse Company and the Quaker City Cold Storage Company as being unduly preferred by the Pennsylvania Railroad Company; complainants in No. 20968 (Sub-No. 1) name the Pennsylvania Warehousing & Safe Deposit Company as being unduly preferred by the Baltimore & Ohio Railroad Company; and complainants in No. 20968 (Sub-No. 2) name the Pennsylvania Warehousing & Safe Deposit Company and the Philadelphia Warehousing & Cold Storage Company as being unduly preferred by the Reading Company.

[fol. 242-b] to as the contract warehouses, in connection with the handling of interstate shipments of package freight, in carloads and less than carloads, was and is unjustly discriminatory, unduly preferential of the contract warehouses, and unduly prejudicial to complainants, in violation of sections 2 and 3 of the interstate commerce act. We are asked to require defendants to cease and desist from the alleged violations of the act.[3] Reparation also is sought.

The Millers' National Federation intervened in behalf of complainants. Its position is substantially that of complainants and will not be separately stated here. The Merchants' Warehouse Company, Pennsylvania Warehousing & Safe Deposit Company, Philadelphia Warehousing & Cold Storage Company, Commercial Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Grocers' & Importers' Exchange, and Association of Manufacturers' Representatives, Incorporated, intervened in behalf of defendants. Defendants and interveners in their behalf made a formal motion at the hearing that our orders entered September 17, 1928, authorizing the Millers' National Federation to intervene, be rescinded on the ground that such intervention unduly broadens the issues. This intervener introduced no evidence. The motion is denied.

In all the larger cities, including Philadelphia, public warehouses are customarily used for the receipt, storage, and distribution of merchandise. That these warehouses perform an important public service is undisputed. The merchandise warehouse receives goods in carloads[4] and distributes them in smaller quantities to local jobbers or retailers, or reships them in less-than-carload lots to nearby destinations; issues negotiable and nonnegotiable receipts, provides insurance, and allows credit to be obtained on merchandise stored; provides recoopering, marking, and separation of varieties, and various incidental

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[3] Complainants take the position that the making of these allowances is in violation of section 1 of the Elkins Act and that similar allowances could not properly be made to them.

[4] There is a relatively small inbound movement in less than carloads.

clerical services. Warehouse services enable manufacturers to keep spot stocks for their customers; equalize production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space; reduce freight charges and save time in transit through handling goods in carload quantities; reduce fire [fol. 242-c] risk and loss and damage claims; and eliminate the necessity of providing storage space at point of origin. Both complainants and the contract warehouses furnish these services.

The allowances complained of are cash payments made by defendants to the contract warehouses ostensibly for services rendered in connection with the loading and unloading of package freight.[5] Similar payments are not made to complainants. The conditions under which the allowances are given are set forth in several written agreements, of record herein, between defendants and the contract warehouses. The allowances made by the Pennsylvania are also stated in its tariff G. O.—I. C. C. No. 14400. The remaining defendants do not file tariffs covering their allowances to the contract warehouses. The evidence indicates that no allowances are made on traffic consigned to or by the contract warehouses as such. The form of billing customarily used in the consignment of goods to the contract warehouses is to a named party, care of the warehouse at which the carrier is to make delivery.

The allowances differ in amount and application according to the traffic. In certain instances they are applied to both carload and less-than-carload shipments, inbound and outbound, and in other instances they are given only on inbound carload shipments. They range from 2.5 cents per barrel on flour to 50 cents per ton on other freight. The Pennsylvania gives allowances on inbound and outbound carload and less-than-carload freight handled by the Merchants' Warehouse Company and on inbound carload and less-than-carload dairy freight handled by the Quaker City Cold Storage Company; the Baltimore & Ohio, on inbound and outbound carload freight handled by the Pennsylvania

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[5] The term "package freight" does not include automobiles or other motor vehicles.

Warehousing & Safe Deposit Company; and the Reading, on inbound carload freight handled by the Philadelphia Warehousing & Cold Storage Company and the Pennsylvania Warehousing & Safe Deposit Company. Neither the Baltimore & Ohio nor the Reading gives allowances to the contract warehouses on less-than-carload freight. No allowances are made by the Reading on outbound shipments. That the allowances are substantial in amount is indicated by the payments made by the Pennsylvania to the Merchants' Warehouse Company during 1927 of approximately $200,000.

Carload freight carried at carload rates is ordinarily loaded and unloaded by the owner or his agent. In this connection rule 27 of the official classification requires owners to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by [fol. 242-d] rail carriers, carried at carload ratings. By exceptions to the classification, however, defendants agree to load or unload carload package freight at certain Philadelphia freight stations, except when handled direct to or from cars on team tracks at owner's request. Defendants and interveners in their behalf assert that these freight stations include the facilities operated by the contract warehouses. The Pennsylvania and the Baltimore & Ohio have so provided in their tariffs, but the Reading has no similar tariff provision. The contract warehouses perform the work of loading and unloading carload package freight for defendants pursuant to the agreements heretofore mentioned.

Defendants' practice of loading and unloading carload freight at Philadelphia has been in effect for many years. According to the *the* Pennsylvania the practice first started in connection with the receipt and delivery of freight at water-front stations having no team-track facilities. In time the practice spread to include other Philadelphia stations, not only on the lines of the Pennsylvania but also on the Baltimore & Ohio and the Reading.

The services performed by the contract warehouses do not differ in substance from those rendered by complainants. The warehouses of complainants and those of the contract warehouses are served by private sidetracks or sidings connecting with the lines of one or more defendants. Both handle the same classes of freight and both

obtain business by widespread advertising in prominent trade publications, by sending letters, pamphlets, and circulars to prospective customers offering them in their services, and by personal solicitation. There is active and keen competition between complainants and the contract warehouses. Concerns using public-warehouse facilities generally select the company offering them the lowest aggregate charge for the distribution of their goods. By means of the allowances the contract warehouses are able to quote lower charges than can complainants.

Complainants urge, among other things, that the allowances are in fact rebates given for the purpose of buying freight traffic controlled by the contract warehouses and causing it to be transported over defendants' lines; that the facilities of the contract warehouses are not railroad freight stations or used by the general public as such; that the contract warehouses are the actual shippers of the freight handled by them; that the contract warehouses do not perform any task for defendants that entitle them to receive allowances; and that the loading and unloading of freight by the contract warehouses is not in fact transportation service and that allowances therefor, being for trade services, are illegal.

[fol. 242-e] Defendants take the position that under their tariffs they are required to load and unload carload and less-than-carload package freight at Philadelphia; that they lawfully employ the contract warehouses as agents to perform these loading and unloading services, and that the allowances paid therefor are compensation for such services; that there is no legal obligation on the part of defendants to make complainants' warehouses their stations or to employ complainants as their agents to load and unload freight; that the contract warehouses are neither consignors nor consignees of the freight handled by them; and that the allowances paid to such warehouses, being for transportation services rendered, are not illegal. The contentions of the contract warehouses and interveners in behalf of defendants are similar to those of defendants.

There is much conflicting testimony in the record with respect to the foregoing contentions. The weight of the evidence, however, supports those advanced by complainants. Among other things, the record is persuasive that the contract warehouses are compensated for the solicita-

tion of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations but are confined to the handling of merchandise for the patrons of the warehouses; and that the services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed for the benefit of the owner of the merchandise rather than for defendants.

While the contract warehouses are not the owners of the goods received or shipped by them, all of defendants' dealings are with these companies and none with the owners of the goods. As to many of the inbound carload shipments the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to complainants, shipments from and to their warehouses being handled in substantially the same manner.

[fol. 242-f] In McCormick Warehouse Co. v. Pennsylvania R. Co., 148 I. C. C. 299, wherein we found unlawful a similar situation at Baltimore, Md., we said at page 306:

While the Terminal is not the owner of the goods received and shipped by it, all of the dealings of defendants are with the Terminal and none with the owner of the goods. As to many of the inbound shipments the Terminal is the only party to whom delivery of the goods could be made as carload shipments, the real owners being out-of-town concerns which ship to the Terminal for distribution in less-than-carload lots. It is our view that the Terminal, even though not the owner of the goods, has been given

dominion over such goods for transportation purposes and that accordingly for transportation purposes it should be deemed the consignor of shipments from and consignee of shipments to its warehouses.

Although contention is here made it has not been shown that there is any distinction in substance as between that case and the case here considered. There, as here, the keystone of the defense is the tariff obligation to load and unload freight at the preferred warehouses. With this as a starting point, defendants then rely upon their right to select their own agencies to carry out their tariff obligations and their further right to limit themselves in that selection. Transfer in St. Louis and East St. Louis by Dray and Truck, 155 I. C. C. 129, 139-142. But where it is shown that an unlawful discrimination is being worked the mere fact that the machinery for working it is in tariff form can not afford it sanctity. It is fundamental that an unlawful discrimination practiced under authority of a tariff is just as evil as one which is practiced contrary to a tariff. When substance, and not mere form, is considered the conclusion is inescapable that the practices here complained of are unlawful.

In Terminal Warehouse Co. v. United States, 31 Fed. (2d) 951, the district court refused to set aside our order, holding that the allowances considered in the McCormick case were in violation of both sections 2 and 3 of the act.

Prior to the filing of exceptions to the examiner's proposed report all parties conceded that the facts and questions of law in the instant case were the same in substance as those in the McCormick case. In their exceptions and at the oral argument most of the parties opposed to the complaints receded from their position in this respect. The record is persuasive that there is no real distinction between these cases.

Complainants confine the basis of their claim for reparation to damages resulting from shrinkage or diminution of their normal business profits. They urge that they be permitted to submit proof of actual pecuniary loss at a further hearing to be held subsequent to the decision herein, contending that it would be impracticable to make such proof prior to the date the unjust discrimination and undue [fol. 242-g] prejudice is removed. We are not inclined to

this view. Complainants have been accorded ample opportunity to present facts supporting an award of reparation. Their case must stand or fall on the facts now of record. The evidence is far too vague and indefinite to warrant the conclusion that complainants have suffered actual pecuniary loss attributable directly to the alleged unlawful practices. Damage must be shown with certainty to support an award of reparation under findings of unjust discrimination or undue prejudice. Penn. R. R. Co. v. International Coal Co., 230 U. S. 184, 206. Reparation is denied.

Following McCormick Warehouse Co. v. Pennsylvania R. Co,, supra, and upon this record, we find that the practice of defendants in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid, and refusing to make similar allowances to complainants for performing similar services, results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will therefore be required to cease and desist from publishing or making such discriminatory and preferential allowances. The Pennsylvania and the Baltimore & Ohio will also be required to cancel their tariff provisions which make the facilities of the contract warehouses a part of the respective station facilities of these defendants at Philadelphia.

An appropriate order will be entered.

Commissioner Taylor did not participate in the consideration or disposition of this proceeding.

[fol. 242-h] Order

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, Division 3, Held at Its Office, in Washington, D. C., on the 28th Day of December, A. D. 1929

No. 20968

JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY, Walter A. Bailey, and Terminal Warehouse Company

v.

THE PENNSYLVANIA RAILROAD COMPANY

No. 20968 (Sub.-No. 1)

WALTER A. BAILEY AND TERMINAL WAREHOUSE COMPANY

v.

THE BALTIMORE & OHIO RAILROAD COMPANY

No. 20968 (Sub-No. 2)

REX & COMPANY, INCORPORATED; JAMES GALLAGHER, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company

v.

READING COMPANY

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and said division having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the above-named defendant in No. 20968 be, and it is hereby, notified and required to cease, desist, and abstain, from publishing or making allowances to the Merchants' Warehouse Company and the Quaker City Cold Storage Company in connection with the loading or unloading of package freight at Philadelphia, Pa.

It is further ordered, That said defendant in No. 20968 be, and it is hereby, notified and required to cancel its tariff provisions which make the warehouses of said Merchants' [fol. 242-i] Warehouse Company and said Quaker City Cold Storage Company a part of said defendant's station facilities at Philadelphia, Pa.

It is further ordered, That the above-named defendant in No. 20968 (Sub-No. 1) be, and it is hereby, notified and required to cease, desist, and abstain, from publishing or making allowances to the Pennsylvania Warehousing & Safe Deposit Company in connection with the loading or unloading of package freight at Philadelphia, Pa.

It is further ordered, That said defendant in No. 20968 (Sub-No. 1) be, and it is hereby, notified and required to cancel its tariff provisions which make the warehouses of said Pennsylvania Warehousing & Safe Deposit Company a part of said defendant's station facilities at Philadelphia, Pa.

It is further ordered, That the above-named defendant in No. 20968 (Sub-No. 2) be, and it is hereby, notified and required to cease, desist, and abstain, from publishing or making allowances to the Pennsylvania Warehousing & Safe Deposit Company and the Philadelphia Warehousing & Cold Storage Company in connection with the unloading of package freight at Philadelphia, Pa.

And it is further ordered, That this order shall become effective on February 10, 1930, and that defendants shall comply therewith upon not less than one day's notice to this commission and to the general public by filing and posting tariffs in the manner prescribed in section 6 of the interstate commerce act, and that this order shall remain in force until the further order of the commission in the premises.

By the Commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[fol. 243] Filed Jan. 30, 1930. R. H. Interstate Commerce Commission

Original

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968

JAMES GALLAGHER et al.

vs.

PENNSYLVANIA RAILROAD COMPANY

PETITION OF MERCHANTS WAREHOUSE COMPANY FOR A REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF EFFECTIVE DATE OF THE ORDER

William A. Glasgow, Jr., M. Hampton Todd, Attorneys for Petitioner.

Philadelphia, January 28, 1930.

[fol. 244] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968

JAMES GALLAGHER et al.

vs.

PENNSYLVANIA RAILROAD COMPANY

PETITION OF MERCHANTS WAREHOUSE COMPANY FOR A REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF EFFECTIVE DATE OF THE ORDER

Comes now the Merchants Warehouse Company, an Intervener in the above entitled proceeding, and respectfully petitions the Commission to grant a rehearing or reargument therein before the whole Commission, and in support of said petition respectfully shows:

1. The case was argued on November 27th, 1929, before Division 3. The report of the Commission was made by

Commissioner Porter, in which Commissioner Aitchison concurred. Commissioner Taylor did not participate in the consideration or disposition of this proceeding.

2. A question similar in some respects to the question [fol. 245] here involved, and differing in other respects, was presented in the case of McCormick Warehouse Company vs. Pennsylvania Railroad Company, 95 I. C. C. 301, 148 I. C. C. 299, which was decided by Division 4,—Commissioners Meyer, Eastman and Woodlock. A petition to enjoin and set aside the Order of the Commission in the McCormick Warehouse case was denied by a Statutory Court in Terminal Warehouse Company vs. United States, 31 Fed. (2nd) 951.

3. The decision of Division 3 in this case is erroneous in the following particulars:

(a) The Division held that the facilities of the Contract Warehouses were only nominally open to the general public as railroad freight stations, but were not in fact public stations in that they were confined to the handling of merchandise for the patrons of the Warehouse; whereas the fact is that the Contract Warehouses are both nominally and actually public stations open to the general public, and they are and have been for many years actually used by the public.

(b) Division 3 held that the services performed by the Contract Warehouses in connection with the loading and unloading of freight are in fact performed for the benefit of the owners of the merchandise rather than for the railroad; whereas, the actual fact is that the said services, although they may be "performed for the benefit of the owners of the merchandise" in the same sense as any other transportation service benefits the owners of the merchandise, were rendered as agents of the Railroad Company to perform a distinctly transportation service.

[fol. 246] (c) Division 3 held that the Contract Warehouses had been given dominion over goods for transportation purposes and accordingly for transportation purposes they should be deemed consignors of shipments from, or consignees of shipments to their warehouses; whereas the fact is that the goods were delivered to them by the Rail-

road Companies for the rendition of a transportation service which the Railroads have held themselves out to perform.

(d) Division 3 held that the practice of defendants in making allowances to the Contract Warehouses in connection with the loading or unloading of package freight at Philadelphia, and refusing to make similar allowances to the Complainants, resulted in unjust discrimination, in undue preference to the Contract Warehouses, and in undue prejudice to Complainants. Such discrimination, preference or prejudice, if it existed, could be removed by either giving allowances to all or denying them to all, but the Complainant specifically charges that the allowances are illegal and must be refused. This shows that the essence of the claim is not one of undue pre-erence and the Division should, therefore, have so found.

(e) Division 3 finds that the allowances are nothing more than a device or attempt to lend legality to the payment of rebates to the Contract Warehouses; whereas in fact there is no rebate paid. A rebate is a deduction from the published freight rate which finds its way to the pocket of the owner of the freight, whereas it is not contended here, and there is no evidence to support such a contention if it were made, that any of these payments are made to the owners of the freight.

[fol. 247] (f) Division 3 should have found that the service for which the allowances were made, to-wit, the loading and unloading of freight, was a transportation service within the meaning of Section 1 of the Interstate Commerce Act, and that the Contract Warehouses in performing that service were performing a transportation service as an agent of the Railroad.

(g) Division 3 should have found that there can be no undue preference, within the meaning of Section 3 of the Act, to an agent of the Railroad rendering a transportation service, nor can there be undue prejudice to any person desiring to render such a transportation service and to be paid for it by the Railroad, nor can there be unjust discrimination within the meaning of Section 2 of the Act between two persons desiring to render transportation services.

(h) Division 3 should have found that petitioner was neither the consignor nor the consignee nor the owner of any of the freight on which unloading payments are made and that therefore the payments were legal, and were not prohibited by any provisions of the Interstate Commerce Act bearing on payments by carriers to consignors, consignees, shippers or owners of freight.

4. The arrangement between Petitioner and the Pennsylvania Railroad Company has been in effect in Philadelphia for forty years and is of great importance to the public and to the Petitioner.

5. A disturbance of the present arrangement during pendency of this case would cause great inconvenience and irreparable injury to the shipping public of Philadelphia, [fol. 248] and would do great damage to your Petitioner:

Wherefore Petitioner prays that a rehearing or reargument before the full Commission be granted in the above entitled case, and that pending such rehearing or reargument the effective date of the Order be postponed, or the Order suspended or stayed, and that the Commission enter such further Order or Orders in the premises as to it may seem reasonable and just.

Merchants Warehouse Company, by George M. Richardson, General Manager. George M. Richardson, Wm. A. Glasgow, Jr., M. Hampton Todd, Counsel for Petitioner, 1018 Real Estate Trust Bldg., Philadelphia, Penna.

Dated at Philadelphia, Pennsylvania, January 28th, 1930.

[fol. 249] Filed Jan. 30, 1930. Interstate Commerce Commission. H. R.

BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968 (Sub. No. 1)

WALTER A. BAILEY and TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

I. C. C. Docket No. 20968 (Sub. No. 2)

REX & COMPANY, INC., et al., Complainants,

vs.

READING COMPANY

PETITION OF PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY FOR REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER OF THE COMMISSION

John P. Connelly, 1526 Land Title Bldg., Philadelphia, Pa., Attorney for Petitioner.

Dated, January 29, 1930.

[fol. 250] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968 (Sub. No. 1)

WALTER A. BAILEY and TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

I. C. C. Docket No. 20968 (Sub. No. 2)

REX & COMPANY, INC., et al., Complainants,

vs.

READING COMPANY

PETITION OF PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY FOR REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER OF THE COMMISSION

And now comes the Philadelphia Warehousing & Cold Storage Company, Intervener in the above entitled pro-
[fol. 251] ceedings, and respectfully petitions the Commission to grant a rehearing or reargument before the whole Commission, and in support of said petition, respectfully shows:

1. The case was argued on November 27th, 1929, before Division 3. The report of the Commission was made by Commissioner Porter, in which Commissioner Aitcheson concured. Commissioner Taylor did not participate in the consideration or disposition of this proceeding.

2. A question similar in some respects to the question here involved, and differing in some respects, was presented in the case of McCormick Warehouse Company vs. Pennsylvania Railroad Company, 95 I. C. C. 301, 148 I. C. C. 299, which was decided by Division 4—Commissioners Meyer, Eastman and Woodlock. A petition to enjoin and set aside the Order of the Commission in the McCormick Warehouse case was denied by a Statutory Court in Terminal Warehouse Company vs. United States, 31 Fed. (2nd) 951.

3. The decision of Division 3 in this case is erroneous in the following particulars:

(a) The Division held that the facilities of the Contract Warehouses were only nominally open to the general public as railroad freight stations, but were not in fact public stations in that they were confined to the handling of merchandise for the patrons of the Warehouses. Whereas the fact is that Contract Warehouses are both nominally and actu- [fol. 252] ally public stations open to the general public, and they are and have been for many years actually used by the public.

(b) Division 3 held that the services performed by the Contract Warehouses in connection with the loading and unloading of freight are in fact performed for the benefit of the owners of the merchandise rather than for the railroads. Whereas the actual fact is that the said services, although they may be "performed for the benefit of the owners of the merchandise" in the same sense as any other transportation service benefits the owners of the merchandise, were rendered as agents of the Railroad Company to perform a distinctly transportation service.

(c) Division 3 held that the Contract Warehouses had been given dominion over goods for transportation purposes and accordingly for transportation purposes they should be deemed consignors of shipments from, or con-

signees of shipments to their warehouses. Whereas the fact is that the goods were delivered to them by the Railroad Companies for the rendition of a transportation service which the Railroads have held themselves out to perform.

(d) Division 3 held that the practice of Defendants in making allowances to the Contract Warehouses in connection with the loading or unloading of package freight at Philadelphia, and refusing to make similar allowances to the Complainants, resulting in unjust discrimination, in undue preference to the Contract Warehouses, and in undue prejudice to Complainants. Such discrimination, prefer- [fol. 253] ence or prejudice, if it existed, could be removed by either giving allowances to all or denying them to all, but the Complainants specifically charges that the allowances are illegal and must be refused. This shows that the essence of the claim is not one of undue preference and the Division should, therefore, have so found.

(e) Division 3 finds that the allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the Contract Warehouses. Whereas in fact there is no rebate paid. A rebate is a deduction from the published freight rate which finds its way to the pocket of the owner of the freight, whereas it is not contended here, and there is no evidence to support such a contention if it were made, that many of these allowances are paid to the owners of the freight.

(f) Division 3 should have found that the service for which the allowances were made, to-wit, the loading and unloading of freight, was a transportation service within the meaning of Section 1 of the Interstate Commerce Act, and that the Contract Warehouses in performing that service were performing a transportation service as an agent of the Railroad.

(g) Division 3 should have found that there can be no undue preference within the meaning of Section 3 of the Act to an agent of the Railroad rendering a transportation service, nor can there be undue prejudice to any person desiring to render such a transportation service and to be paid for it by the Railroad, nor can there be unjust discrimination

[fol. 254] within the meaning of Section 2 of the Act between two persons desiring to render transportation services.

4. The arrangement between Petitioner and the Reading Company has been in effect in Philadelphia for 39 years and is of great importance to the public and to the Petitioner.

5. A disturbance of the present arrangement during pendency of this case would cause great inconvenience and irreparable injury to the shipping public of Philadelphia, and would do great damage to your Petitioner.

Wherefore Petitioner prays that a rehearing or reargument before the full Commission be granted in the above entitled case, and that pending such rehearing or reargument the effective date of the Order be postponed, or the Order suspended or stayed, and that the Commission enter such further Order or Orders in the premises as to it may seem reasonable and just.

Philadelphia Warehousing & Cold Storage Company, by J. A. Geisz, J. A. Geisz, President. John P. Connelly, Counsel for Petitioner, #1526-27 Land Title Bldg., Phila., Pa.

Dated at Philadelphia, January 29, 1930.

[fol. 255] Original

Filed Jan. 30, 1930. Interstate Commerce Commission. H. R.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968 Sub. No. 1

WALTER A. BAILEY and TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY, Defendant

Docket No. 20968 Sub. No. 2

REX AND COMPANY, INC., et al, Complainants,

vs.

READING COMPANY, Defendant

PETITION OF PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY FOR A REHEARING BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER

H. Edgar Barnes, Attorney for Pennsylvania Warehousing and Safe Deposit Company.

January 28, 1930.

[fol. 256] BEFORE THE INTERSTATE COMMERCE COMMISSION

I. C. C. Docket No. 20968 (Sub. No. 1)

WALTER A. BAILEY and TERMINAL WAREHOUSE COMPANY, Complainants,

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

I. C. C. Docket No. 20968 (Sub. No. 2)

REX AND COMPANY, INC., et al., Complainants,

vs.

READING COMPANY

PETITION OF PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY FOR REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER

Comes now the Pennsylvania Warehousing and Safe Deposit Company, Intervener in the above entitled cases, and respectfully petitions the Commission to grant a rehearing or reargument therein before the full Commission, and in support of said petition respectfully shows:

1. The above cases were decided on December 28th, 1929, by Division 3 of the Commission. The report of the Com-

[fol. 257] mission was made by Commissioner Porter, in which Commissioner Aitchison concurred. Commissioner Taylor did not participate in the consideration or disposition of these cases.

2. In the case of McCormick Warehouse Company vs. Pennsylvania Railroad Company, 95 I. C. C. 301, 148 I. C. C. 299, which was decided on November 27th, 1928, by Division 4,—Commissioners Meyer, Eastman and Woodlock, there were presented for decision some facts present in the instant case, but nevertheless differing herefrom in many vital particulars. The questions involved herein, however, have never been submitted to or passed upon by the full Commission. Because of the importance of these questions, and the vast public interests affected, it is deemed proper and essential that the cases be submitted to and decided by the full Commission.

3. The matters erroneously decided in the report of Division 3 are as follows:

(a) (On Sheet No. 3): "The allowances complained of are cash payments made by defendants to the contract warehouses ostensibly for services rendered in connection with the loading and unloading of package freight".

The payments made to Petitioner are not ostensibly for services rendered, but are made for actual transportation services and valuable facilities afforded to the Baltimore and Ohio Railroad Company, and to the Reading Company. With respect to inbound freight, this Petitioner inspects and breaks the seals of the cars, opens the doors, unloads the cars, tallies the contents thereof, makes note of any [fol. 258] damaged contents and reports the damage, overage or shortage of the contents to said Carriers. It carries insurance upon the goods and stores them for the period of forty-eight hours after arrival. It sends out arrival notices to the owners of the merchandise, and on behalf of the Carriers makes collection of the freight charges. With respect to outbound freight, it receives the merchandise at its warehouses, tallies it, inspects it for damage, loads it in the cars and then seals the cars. With respect to facilities afforded, it provides warehousing facilities and buildings at very great expense to accommodate the shipments received under the contracts. Such facilities represent a

capital investment of very large amount and expensive operating costs are incurred.

(b) (On Sheet No. 4): "There is much conflicting testimony in the record with respect to the foregoing contentions. The weight of the evidence, however, supports those advanced by complainants. Among other things, the record is persuasive that the contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations but are confined to the handling of merchandise for the patrons of the warehouses; and that the services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed for the benefit of the owner of the merchandise rather than for defendants."

[fol. 259] Petitioner does not control or solicit any freight traffic whatsoever, nor does it cause the same to be transported over the lines of the Baltimore and Ohio Railroad, or of the Reading Company, exclusively or in any other manner. Such relationship is utterly foreign to that which exists betwen this Petitioner and the two Carriers in question under the terms of the existing contracts. The facilities of Petitioner have been in fact open to the general public as public stations for many years, and are not confined to the handling of merchandise only for its own patrons. The services are performed for the benefit of the Carrier and not for the owner of the merchandise. If such services are finally discontinued, track and platform delivery will of necessity replace the present arrangement. The movement of railroad equipment will be retarded and there will result not only loss to the Carriers, but congestion, tardy clearance and distribution of freight at the railroad stations,—all matters of most serious detriment and disadvantage to Carriers and public alike. To duplicate and procure the facilities and warehouses, the use of which are afforded to the Carriers and the general public under the

existing contracts, would require an enormous investment in purchasing or leasing such convenient locations.

(c) (On Sheet No. 5:) "While the contract warehouses are not the owners of the goods received or shipped by them, all of defendants' dealings are with these companies and none with the owners of the goods. As to many of the inbound carload shipments the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots. The contract ware-[fol. 260] houses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to complainants, shipments from and to their warehouses being handled in substantially the same manner."

Petitioner has no dominion over the goods which are received, and loaded or unloaded and stored under these contracts. The fact is that every action taken, and everything done or attempted to be done by Petitioner in connection with the handling of carload package freight is performed only under actual instructions received from the Carriers, or from the owners of the merchandise. The name of the owner of the merchandise is always specifically set forth upon the railroad way bill. It is not a fact that all of the dealings of the Defendant Carriers are with Petitioner, and none with the owners of the goods, in respect to the merchandise received under the contracts at Petitioner's warehouses. On the contrary, the goods are delivered to Petitioner by the Carriers for the rendering of a transportation service, which the Carriers have held themselves out to the public as ready to perform. These services fall within the term "transportation" as defined in Section 1 of the Act to Regulate Commerce as follows:

"All services in connection with the receipt, delivery * * * storage and handling of the property transported".

(d) (On Sheet No. 5:) "With this as a starting point, defendants then rely upon their right to select their own

[fol. 261] agencies to carry out their tariff obligations and their further right to limit themselves in that selection. Transfer In St. Louis and East St. Louis by Dray and Truck, 155 I. C. C. 129, 139-142. But where it is shown that an unlawful discrimination is being worked the mere fact that the machinery for working it is in tariff form cannot afford it sanctity. It is fundamental that an unlawful discrimination practiced under authority of a tariff is just as evil as one which is practiced contrary to a tariff. When substance, and not mere form, is considered the conclusion is inescapable that the practices here complained of are unlawful".

The decision of the Supreme Court of the United States in the recent case of Brown and White Taxi Cab Company vs. Brown and Yellow Taxi Cab And Transfer Company, 72 Law. Ed. 383, and of this Commission in Transfer in St. Louis, etc. by Dray and Truck, 155 I. C. C. 129, sustained the right of the Carriers to select their own agents to carry out their transportation obligations.

(e) (On Sheet No. 6:) "Prior to the filing of exceptions to the examiner's proposed report all parties conceded that the facts and questions of law in the instance case were the same in substance as those in the McCormick case. In their exceptions and at the oral argument most of the parties opposed to the complaints receded from their position in this respect. The record is persuasive that there is no real distinction between these cases".

This case rests on its own particular facts. In the McCormick Case it was found as a fact that the Carrier had a large controlling ownership interest in the Warehouse Company, and that the Warehouse Company was an active [fol. 262] solicitor of freight over the lines of the Pennsylvania Railroad. In fact it controlled the routing of vast quantities of freight, and furthermore it was not intended that the warehouses there involved should be used by the general public as stations of the Railroad for the receipt and delivery of merchandise.

(f) (On Sheet No. 6:) "Following McCormick Warehouse Co. vs. Pennsylvania R. Co., supra, and upon this record, we find that the practice of defendants in making

allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid, and refusing to make similar allowances to complainants for performing similar services, results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will, therefore be required to cease and desist from publishing or making such discriminatory and preferential allowances. The Pennsylvania and the Baltimore and Ohio will also be required to cancel their tariff provisions which make the facilities of the contract warehouses a part of the respect station facilities of these defendants at Philadelphia".

It is not true that the payments made to this Petitioner are rebates, but the same are in fact compensation for services rendered and facilities actually afforded. They are not devices to lend legality to the payment of rebates, as this Petitioner has no interest, directly or indirectly, in [fol. 263] any of the merchandise which it handles under said contracts. No unjust discrimination and undue prejudice result to Complainants by reason of the fact that the Carrier selects Petitioner to render part of its transportation services for which it makes payment, instead of selecting another agent for the same service.

(g) (Order—On Sheet No. 2:) It is further ordered, That the above-named defendant in No. 20968 (Sub. No. 1) be, and it is hereby, notified and required to cease, desist, and abstain from publishing or making allowances to the Pennsylvania Warehousing & Safe Deposit Company in connection with the loading or unloading of package freight at Philadelphia, Pa.

It is further ordered, That said defendant in No. 20968 (Sub. No. 1) be, and it is hereby, notified and required to cancel its tariff provisions which make the warehouses of the said Pennsylvania Warehousing & Safe Deposit Company a part of said defendant's station facilities at Philadelphia, Pa.

It is further ordered, That the above-named defendant in No. 20968 (Sub. No. 2) be, and it is hereby, notified and required to cease, desist and abstain from publishing or making allowances to the Pennsylvania Warehousing and Safe Deposit Company and the Philadelphia Warehousing & Cold Storage Company in connection with the unloading of package freight at Philadelphia, Pa.

It is respectfully submitted that the above mentioned Orders of the Commission were based upon a misapprehension of the facts of the case.

Wherefore Petitioner prays that a rehearing before the full Commission be granted in the above entitled cases, and that pending such rehearing the effective date of the Order be postponed, stayed or suspended from February [fol. 264] 10th, 1930, and that the Commission enter such further Order or Orders in the premises as to it shall seem reasonable and just.

Pennsylvania Warehousing and Safe Deposit Company, by John A. McCarthy, John A. McCarthy, President. Attest: E. W. Oescher, E. W. Oescher, Secretary, 113 South Third Street, Philadelphia, Pennsylvania. (Seal.) H. Edgar Barnes, Counsel for Petitioner, 518 Real Estate Trust Bldg.

Dated at Philadelphia, Penna., January 28th, 1930.

[fol. 265] Original

Filed Jan. 31, 1930. Interstate Commerce Commission. H. R.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket #20968

JAMES GALLAGHER et al.

v.

PENNSYLVANIA RAILROAD COMPANY

Docket #20968, Sub. No. 1

WALTER A, BAILEY et al.

v.

BALTIMORE AND OHIO RAILROAD COMPANY

Docket #20968, Sub. No. 2

REX AND COMPANY, INCORPORATED,

v.

READING COMPANY.

PETITION OF PHILADELPHIA TRADE BODIES FOR A REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF EFFECTIVE DATE OF ORDER

Allen S. Olmsted, 2nd, William A. Glasgow, Jr., Attorneys for Petitioners.

Philadelphia, January 28, 1930.

[fol. 266] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER et al.

vs.

PENNSYLVANIA RAILROAD COMPANY

Docket No. 20968 (Sub. No. 1)

WALTER A. BAILEY et al.

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

Docket No. 20968 (Sub. No. 1)

REX AND COMPANY, INCORPORATED,

vs.

READING COMPANY

Docket No. 20968 (Sub. No. 2)

PETITION OF PHILADELPHIA TRADE BODIES FOR A REHEARING OR REARGUMENT BEFORE THE FULL COMMISSION AND FOR THE POSTPONEMENT OF THE EFFECTIVE DATE OF THE ORDER

Comes now the Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Phila-

delphia Board of Trade, Philadelphia Bourse, and the As-
[fol. 267] sociation of Manufacturers' Representatives, Incorporated, Intervenors in the above entitled cases, and respectfully petition the Commission to grant a rehearing or reargument before the full Commission, and in support of said Petition respectfully show:

1. Petitioners are organized to protect and advance the commercial and business interests of their members, and the business interests of Philadelphia. Among them they represent substantially all of the organized commercial interests of Philadelphia, who use the warehouses of the Complainants as well as of the Contract Warehouses. No merchant doing business in Philadelphia intervened in this case or testified on behalf of the Complainants.

2. The arrangements which the Commission's Order in this case would prohibit, have been in effect for many years, in some cases over forty years, and have been widely used by the merchants of Philadelphia, and are of great value to them. An interruption of them would do great and irreparable damage to the shipping community of Philadelphia.

3. The decision of Division 3 is erroneous in the following particulars:

(a) Division 3 found in effect that the Complainants and the Contract Warehouses were the real shippers or consignees of the freight, whereas the actual fact is that the merchants of Philadelphia on the one hand, and their purchasers, sellers, or principals on the other hand, are the real consignees and consignors. They are the owners of the freight and as such they patronize both the Complainant Warehouses and the Contract Warehouses.

[fol. 268] (b) Division 3 found in effect that there is no difference between this case and the McCormick Warehouse Company vs. Pennsylvania Railroad Company, 148 I. C. C. 299, whereas, in the McCormick Warehouse case the merchants of Baltimore took no part and made no showing as to their interests. In this case the merchants of Philadelphia have intervened, asking that the arrangements be continued and pointing out wherein the public interests are served by the arrangement.

(c) Division 3 failed to give weight to the fact that the public interests, and the conveniences of trade are served by a continuance of this arrangement, and that any damage to the Complainants is incidental to the fact that they have not been chosen by the Railroad Companies as their agents to render the services which are of value to the public.

4. If the payments for unloading now made to the Contract Warehouses are cancelled, the charge for unloading will, as your Petitioners fear be saddled on the public, and result in an increase in the freight rate amounting to as much as 2½ cents per hundred pounds. The arrangement at New York which continues to exist, provides for an unloading service by the Railroads, so that the elimination of the payments for unloading will in effect wipe out the long existing port differential between New York and Philadelphia on the commodities which are warehoused. This is notably true of flour, and the damage caused to Philadelphia's traffic in that commodity will be especially acute.

Wherefore Petitioners pray that a rehearing or reargument before the full Commission be granted in the above entitled cases, and that pending the disposition of the said [fol. 269] rehearing or reargument the effective date of the Order be postponed, or the Order suspended or stayed, and that the Commission enter such further Order or Orders in the premises as it shall deem reasonable and just.

Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Association of Manufactureres' Representatives, Incorporated, by Wm. A. Glasgow, Jr., Wm. A. Glasgow, Jr., C. S., Attorney. Allen S. Olmsted, 2nd, 2301 Packard Bldg., Phila., Pa.; Wm. A. Glasgow, Jr., 1018 Real Estate Trust Bldg., Phila, Pa., Counsel for Petitioners.

Dated at Philadelphia, Pennsylvania, January 28th, 1930.

[fol. 270] Original

Filed Feb. 1, 1930, Interstate Commerce Commission. H. R.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

GALLAGHER et al.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Docket No. 20968, Sub. 1

BAILEY et al.

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY

Docket No. 20968, Sub. 2

REX AND COMPANY, INC., et al.

vs.

READING COMPANY

ANSWER OF THE COMPLAINANTS TO THE VARIOUS PETITIONS FOR REHEARING OR REARGUMENT, ETC., FILED BY SEVERAL INTERVENERS

By John J. Hickey, Attorney for Complainants.

Washington, D. C., February 1, 1930.

[fol. 271] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

GALLAGHER et al.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Docket No. 20968, Sub. 1

BAILEY et al.

vs.

THE BALTIMORE AND OHIO RAILROAD COMPANY

Docket No. 20968, Sub. 2

REX AND COMPANY, INC., et al.

vs.

READING COMPANY

ANSWER OF THE COMPLAINANTS TO THE VARIOUS PETITIONS FOR REHEARING OR REARGUMENT, ETC., FILED BY SEVERAL INTERVENERS

The complainants, in answer to the said petitions, submit that each of the petitions should be denied.

The petitioners seek rehearing or reargument of the cases before the whole Commission and postponement of the effective date of the order of Division 3. The petitioners are the Merchants Warehouse Company, the Penn-[fol. 272] sylvania Warehousing and Safe Deposit Company, receivers of the unlawful rebates, and several other interveners who are either receivers of the rebates or beneficiaries thereof. Prolongation of the litigation before the Commission or in the Courts, attended by continuance of the rebates, will be very profitable to the petitioners and correspondingly injurious to the complainants. The complaints were filed on April 26, 1928. It appears, therefore, that these cases have been on the Commission's formal docket for a period of 21 months.

Concerning the requests for rehearing or reargument. The defendants and interveners were granted 67 days to prepare their defense after the evidence of the complainants was submitted at the public hearing. Those parties had, and took, ample opportunity to present their evidence and to argue the cases. Their petitions do not show grounds sufficient to entitle them to either rehearing or reargument and, therefore, rehearing or reargument should not be granted.

Concerning the request of the petitioners for postponement of the effective date of the order of Division 3. These cases have been argued at length in our briefs of December 6, 1928, and July 20, 1929. We will not repeat that argument here. The records of congressional committees, the reports of those committees and the debates in Congress leading to the enactment of Section 2 of the Interstate Commerce Act and the Elkins Act, will reveal the congressional conception of the most corrupt and pernicious rebate and that the principal ingredients are (1) traffic buying [fol. 273] motive of the carrier, (2) an agreement compelling the shipper of freight traffic to route his traffic over the lines of the carrier giving the rebates, (3) a large tonnage of freight with correspondingly large aggregate of rebates, as a reward for such routing, (4) unjust discrimination reflected in injury to the business of competing shippers. And the statutory provisions referred to reflect that conception. A review of the record in the cases at hand discloses proof that measures up to the congressional conception of the most injurious rebate. No tribunal has authority to set aside the application of Section 2 of the Interstate Commerce Act or Section 1 of the Elkins Act. The petitions which, through requesting postponement of the effective date of the order of Division 3, in substance are seeking a license authorizing the petitioners to continue to violate criminal statutes should be denied.

The complainants, therefore, respectfully urge that each of the petitions of the interveners be denied.

A copy of this answer has been mailed to each party of record.

Respectfully submitted.

J. J. Hickey, John J. Hickey, 800 Southern Building, Washington, D. C., Attorney for Complainants.

Washington, D. C., February 1, 1930.

[fols. 274-283] Original

Filed Feb. 6, 1930, Interstate Commerce Commission. H. R.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER ET AL.

vs.

PENNSYLVANIA RAILROAD COMPANY

Docket No. 20968, Sub. No. 1

WALTER A. BAILEY ET AL.

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

Docket No. 20968, Sub. No. 2

REX AND COMPANY INCORPORATED,

vs.

READING COMPANY

ANSWER OF MILLERS' NATIONAL FEDERATION TO THE SEVERAL PETITIONS FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER AND FOR A REHEARING OR REARGUMENT BEFORE THE ENTIRE COMMISSION

Herbert J. Campbell, Attorney for Millers' National Federation, 105 South La Salle Street, Chicago, Illinois.

Chicago, February 4, 1930.

[fol. 284] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. 20968

JAMES GALLAGHER ET AL.

vs.

PENNSYLVANIA RAILROAD COMPANY

Docket No. 20968, Sub. No. 1

WALTER A. BAILEY ET AL.

vs.

BALTIMORE AND OHIO RAILROAD COMPANY

Docket No. 20968, Sub. No. 2

REX AND COMPANY, INCORPORATED

vs.

READING COMPANY

ANSWER OF MILLERS' NATIONAL FEDERATION TO THE SEVERAL PETITIONS FOR POSTPONEMENT OF EFFECTIVE DATE OF ORDER AND FOR A REHEARING OR REARGUMENT BEFORE THE ENTIRE COMMISSION

Comes now Millers' National Federation, intervener in the above entitled cases, and respectfully submits that the petitions filed herein by Merchants Warehouse Company, Pennsylvania Warehousing and Safe Deposit Company and Philadelphia Trade Bodies for postponement of effectives date of order and for rehearing or reargument before the entire Commission, and each of them, should be denied for the following reasons:

(1) The issues involved herein are identical with the issues in the case of McCormick Warehouse Company v. [fol. 285] Pennsylvania Railroad Company, 148 I. C. C. 299, and the decision of Division 4 in that case is controlling here.

(2) The decision of Division 4 in McCormick Warehouse Company v. Pennsylvania Railroad Company, supra, was upheld by the United States District Court in the case of Terminal Warehouse Co. v. United States, 31 Fed. 2d, 951, wherein the court held that the allowances in question constituted rebates in violation of Section 2 of the Interstate Commerce Act.

(3) If the allowances paid by the railroads in the instant cases are rebates then the granting of a postponement of the effective date of the order of Division 3 would be tanto-

mount to the granting of a license to violate the Interstate Commerce Act.

(4) The petitions do not show grounds sufficient to entitle petitioners to a postponement of the effective date of the order, nor do they, nor any of them, show sufficient grounds to entitle petitioners, or any of them, to a rehearing or reargument before the entire Commission.

(5) The granting of the petitions for postponement of the effective date of the order of Division 3 would be prejudicial to the interests of the members of the Millers' National Federation in that it would permit the continuance of practices which have been shown of record herein to be harmful to their interests.

Wherefore this intervener, Millers' National Federation, [fol. 286] prays that said petitions, and each of them, be denied.

Respectfully submitted.

Herbert J. Campbell, Herbert J. Campbell, 105 South La Salle Street, Chicago, Illinois, Attorney for Intervener Millers' National Federation.

Chicago, Illinois, February 4, 1930.

[fol. 287] Received Feb. 5, 1930, Section of Dockets

AT A SESSION OF THE INTERSTATE COMMERCE COMMISSION, DIVISION 3, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE FIFTH DAY OF FEBRUARY A. D. 1930

No. 20968

JAMES GALLAGHER et al.

v.

PENNSYLVANIA RAILROAD COMPANY

No. 20968 (Sub. No. 1)

WALTER A. BAILEY et al.

v.

BALTIMORE & OHIO RAILROAD COMPANY

No. 20968 (Sub. No. 2)

REX & COMPANY, INC., et al.

v.

READING COMPANY

ORDER

Upon consideration of petition from Philadelphia trade bodies and various intervenors for postponement of the effective date of the order, and upon further consideration of the record in the above entitled proceedings:

It is ordered, That the effective date of the order herein of December 28, 1929, be and it is hereby postponed from February 10 to February 25, 1930, upon one day's notice to the Commission, and to the general public.

It is further ordered, That in all other respects said order of December 28, 1929, shall remain in full force and effect.

By the commission, Division 3.

George B. McGinty, Secretary. (Seal.)

[fol. 288] Received Feb. 12, 1930, Section of Dockets

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 10TH DAY OF FEBRUARY, A. D. 1930

No. 20968

JAMES GALLAGHER et al.

v.

PENNSYLVANIA RAILROAD CO.

No. 20968 (Sub. No. 1)

WALTER A. BAILEY et al.

v.

BALTIMORE & OHIO R. R. Co.

No. 20968 (Sub. No. 2)

REX & COMPANY, INC., et al.

v.

READING COMPANY

ORDER

Upon consideration of petitions of the Pennsylvania Warehouse and Safe Deposit Company, Philadelphia Warehouse and Cold Storage Company, Merchants Warehouse Company, and of Philadelphia Trade Bodies, for rehearing or reargument before the Commission, and of complainants' reply thereto; and upon further consideration of the record in the above entitled proceedings:

It is ordered, That the said petitions be, and they are, hereby, denied.

By the Commission.

George B. McGinty, Secretary. (Seal.)

[fol. 289] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Equity. No. 5781

THE MERCHANTS WAREHOUSE COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents

In Equity. No. 5789

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents

In Equity. No. 5791

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, Petitioner,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Respondents

Statement of Evidence—Filed Jan. 7, 1931

These causes came on for hearing of applications filed by each of the petitioners for a temporary stay of the commission's order on February 21, 1930, before the Honorable Victor B. Woolley, Circuit Judge, Honorable J. W. Thompson, and Honorable Oliver B. Dickinson, District Judge. [fol. 290] The petitioner in No. 5781 was represented by its solicitors Allen S. Olmsted, 2nd. and M. Hampton Todd; the petitioner in No. 5789 by its solicitors H. Edgar Barnes and Owen J. Roberts; the petitioner in No. 5791 by its solicitor John P. Connelly; the plaintiff interveners by their solicitor Allen S. Olmsted, 2nd. The United States of America was represented by Elmer B. Collins, Special Assistant to the Attorney General; the Interstate Commerce Commission by J. Stanley Payne, its Assistant Chief Counsel; the defendant interveners by their solicitor John J. Hickey.

Thereupon GEORGE M. RICHARDSON was called as a witness in behalf of petitioner in No. 5781 and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Todd:

I am General Manager and Treasurer of the Merchants Warehouse Company. The aggregate of the compensation paid us for service rendered, by the Pennsylvania Railroad, under the terms of our contracts with them for the years 1926 to 1929, inclusive was

1926	$142,149.12
1927	156,958.17
1928	143,485.93
1929	129,738.81
Total	$572,332.03

(No cross-examination.)

Thereupon Edward W. Obscher was called as a witness in behalf of petitioner in No. 5789 and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Roberts:

[fol. 291] I am secretary and treasurer of the Pennsylvania Warehousing and Safe Deposit Company. The amounts received by our company from the Reading Company under our contract for services to that company are:

April to December,	1926	$24,501.24
	1927	28,620.45
	1928	27,975.64
	1929	28,841.07

The sums paid by the Baltimore & Ohio Railroad during the same periods are:

April to December,	1926	$9,866.03
	1927	12,770.37
	1928	9,962.47
	1929	9,639.34

(No cross-examination.)

Thereupon Jacob A. Geisz was called as a witness in behalf of petitioner in No. 5791 and, having been duly sworn, testified as follows:

Direct examination.

By Mr. Connelly:

I am with the Philadelphia Warehousing & Cold Storage Company. I have prepared a memorandum of the payments made to us for services rendered to the Reading Company. They were:

Year ending March 31,	1926	$19,727.39
	1927	21,908.18
	1928	20,992.42
	1929	22,406.93

(No cross-examination.)

[fol. 292] Thereupon there was offered and received in evidence in behalf of each of the three petitioners jointly a certified copy of proceedings before the Interstate Commerce Commission in James Gallagher, et al. vs. The Pennsylvania Railroad Company, Docket No. 20968; Walter A. Bailey, et al. vs. The Baltimore & Ohio Railroad Company, Docket No. 20968, Sub. No. 1; and Rex & Company, Inc. et al. vs. Reading Company, Docket No. 20968, Sub. No. 2, including a transcript of the testimony and the exhibits introduced in evidence in said proceedings, of which transcript the following is a condensed statement in narrative form:

[fol. 293] OFFER IN EVIDENCE

No. 20968

JAMES GALLAGHER et al., Complainants,

v.

PENNSYLVANIA RAILROAD COMPANY, Defendant

No. 20968 (Sub. No. 1)

WALTER A. BAILEY and TERMINAL WAREHOUSE COMPANY, Plaintiffs,

v.

BALTIMORE & OHIO RAILROAD COMPANY, Defendant

No. 20968 (Sub. No. 2)

REX AND COMPANY, INC., et al., Complainants,

v.

READING COMPANY, Defendant

NARRATIVE OF THE EVIDENCE BEFORE THE INTERSTATE COMMERCE COMMISSION

[fol. 294] Room 1103 I. C. C. Building,

Washington, D. C., Monday, July 30, 1928.

The above entitled matters came on for hearing, pursuant to notice, at 10 o'clock a. m., before Examiner R. M. Brown.

Mr. John J. Hickey, 800 Southern Building, Washington, D. C., appearing for complainants:

Mr. Henry Wolf Bikle, 225 Broad Street Station, Philadelphia, Penna., appearing for the Pennsylvania Railroad Company.

Mr. Charles R. Webber, B. & O. R. R. Co., Law Department, Baltimore, Md., appearing for The Baltimore & Ohio Railroad Company.

Mr. William L. Kinter, and Mr. William I. Woodcock, Jr., Reading Terminal, Philadelphia, Pa., appearing for the Reading Company.

Mr. M. Hampton Todd, 133 S. 12th Street, Philadelphia, Pa., and Mr. William A. Glasgow, Jr., 1018 Real Estate Trust Building, Philadelphia, Pa., appearing for the Merchants Warehouse Company.

Mr. William A. Glasgow, Jr., 1018 Real Estate Trust Building, Philadelphia, Pa., and Mr. Allen S. Olmsted, 2nd, 2301 Packard Building, Philadelphia, Pa., appearing for The Commercial Exchange and other Trade Bodies, Interveners.

Mr. Winfred N. Stilwell, (for H. Edgar Barnes, Esq.), 518 Real Estate Trust Building, Philadelphia, appearing [fol. 295] for the Pennsylvania Warehousing & Safe Deposit Company.

Mr. John P. Connelly, 1526 Land Title Building, Philadelphia, Pa., appearing for the Philadelphia Warehousing & Cold Storage Co., interveners.

Mr. Hubert J. Horan, 465 Bourse Building, Philadelphia, Pa., appearing for the Commercial Exchange of Philadelphia, Pa.

Mr. Herbert J. Campbell, 105 South La Salle St., Chicago, appearing for Millers National Federation, intervener.

COLLOQUY

Examiner Brown: The complaint in No. 20968 alleges that the rates and charges collected by the defendant for the transportation of commodities from complainant's warehouses in Philadelphia to interstate destinations, or from interstate origin points to said warehouses were and

are unjustly discriminatory, unduly preferential of other competing companies, and unduly prejudicial to complainants, in violation of Sections 2 and 3 of the Interstate Commerce Act. The Commission is asked to prescribe non-discriminatory and non-prejudical rates for the future and to award reparation.

The issues in the sub-numbered complainants are identical except that the parties are, in some instances, different.

Are the issues correctly stated?

Mr. Hickey: I believe they are.

Mr. Kinter: They are correctly stated, but we think the [fol. 296] issue as to No. 20968, Sub No. 2, is necessarily separate and distinct from that in the other cases. This appears from the fact that this is brought as a separate docket, and is based on contracts as to which the Reading Company and certain warehouse companies alone are parties.

We ask for a severance of this Sub No. 2 from the other cases. We believe it will make for clarity of the record, and there will be no difficulty if the main case is heard first, as we presume it will be, in stipulating in the record in Sub 2, parts of the record of the main case as are applicable to our case.

Mr. Webber: On behalf of the Baltimore & Ohio Railroad Company in Sub No. 1, I make a similar request. I think it will, at least, make the record much clearer if we can have the record separate.

Examiner Brown: How about you, Mr. Bikle?

Mr. Bikle: It is a matter of indifference to me, provided it be understood in taking the testimony, that the cases are not consolidated in a legal sense, but simply heard concurrently. In other words, I agree with Mr. Kinter and Mr. Webber, that the three cases are independent legally, but I have no objection either to taking all the testimony at once or to taking it separately, but if it is taken at once, I think it ought to be understood that it is applicable to each case.

Examiner Brown: Mr. Hickey, is your testimony so prepared that it can be presented separately?

[fol. 297] Mr. Hickey: I have not planned on three separate trials in these cases. I have certain witnesses coming today and certain witnesses coming tomorrow, and some more on Wednesday.

For instance, I will call one witness to testify for the Bailey Warehouse, and I have to confine his testimony to the Pennsylvania Railroad alone then after we finish the Pennsylvania Railroad case we will have to put the same witness on and go over virtually the same ground for the Baltimore and Ohio, and when we finish the Baltimore & Ohio case, we will have to put on the same witness for the Reading case, and try it three times over.

But, I want to help Mr. Webber and Mr. Kinter in a separate presentation so far as I can, but I do not think I should be required to try the same case three times over; that is, calling the same witnesses for each case, and if those gentlemen can help me out of that dilemma, I will try to be helpful to them in getting as much of a separate presentation as we can work out.

Mr. Webber: I think it is possible to agree that testimony of a general witness so far as it relates to the practices that are under consideration here may be made a part of the record without repetition of the actual testimony in each of the sub-numbers.

Examiner Brown: Mr. Webber, do you feel that a consolidated hearing will prejudice your case?

Mr. Webber: Well, sir, I cannot tell. My thought is this, however; that we will have a much clearer record, and we [fol. 298] may have different facts in the sub-numbers from the facts in the original case, and therefore it will be a help to the Commission as well as ourselves, in writing our briefs, if we can have the testimony separated as to each of the cases, so far as it may be possible, the testimony having a general bearing upon all of the issues.

Mr. Hickey: You appreciate I am in quite a dilemma in trying to separate the testimony of my witnesses——

Mr. Webber: Certainly. Your witnesses, I understand, will testify in the first place with respect to his business, and he wants to speak, first of all, with regard to the original complaint——

Examiner Brown: Further discussion on this subject will be off the record.

(A short informal discussion, off the record, followed; after which the hearing was resumed as follows:)

Examiner Brown: The ruling of the Examiner is that this case shall be tried at the same time.

In so far as possible, Mr. Hickey has agreed off the record, to present these cases in such a manner so that they can be distinguished between the original complaint and the two sub-numbers. The defendants, as I understand it, have prepared their cases separately and their presentation will follow exactly the complaints in which they are interested.

This record will be a consolidated record and all testimony taken in this case will apply equally to all three complaints, in so far as they are specifically applicable to these complaints.

[fol. 299] Mr. Hickey: I would like to have it understood that I cannot undertake to separate the testimony of certain representatives of the complainants who deal with the three Railroad Companies; that it will be impossible for me to separate that testimony.

Examiner Brown: You may proceed, Mr. Hickey.

Mr. Hickey: If the Examiner please on July 17 I filed an application with the Commission for the issuance of a subpœna duces tecum which, if issued, would require the Pennsylvania Railroad Company to produce certain of its records and documents pertaining to the issues in this case. A few days afterwards the Chief Examiner asked me to submit a letter to counsel for the Pennsylvania Railroad Company asking him to produce these records. I might say the same course of action was taken with respect to the Reading Company and the Baltimore & Ohio.

So, at the suggestion of the Chief Examiner, I sent a letter to Mr. Bikle, counsel for the Pennsylvania Railroad, and I will now ask Mr. Bikle to produce the records called for in that letter, or to state the position of the Pennsylvania Railroad Company in the matter.

Examiner Brown: You have made a similar request on the Baltimore & Ohio and the Reading Company?

Mr. Hickey: Yes.

Examiner Brown: Mr. Bikle?

Mr. Bikle: I wrote Mr. Hickey that my Company would produce these documents forthwith to the extent it would be practicable, but I find we can produce all of them.

I think it is perfectly permissible for the railroad, either of its own volition or at the request of its adversary, to produce relevant matter from its records for presentation to the Commission.

[fol. 300] Examiner Brown: Mr. Webber, have you similar information?

Mr. Webber: Yes, I received Mr. Hickey's two letters, which I think were sent on the same date, requesting copies of agreements and certain information as to shipments. I am prepared to introduce such parts of the agreement as are relevant to this proceeding and also to furnish the information regarding shipments.

Mr. Kinter: We are prepared to produce substantially all the records that Mr. Hickey has called for. We do this in the belief, as stated by Mr. Bikle, that it is proper to produce this evidence, and we believe practically we are under the compulsion of a subpœna because if we did not comply with the request the subpœna would issue.

Mr. Hickey: I now call for the production of the agreements in writing and leases between the Pennsylvania Railroad Company and its subsidiaries on the one hand and the Merchants Warehouse Company on the other hand, that were in force at any time during the past five years.

Mr. Bikle: I have those, Mr. Hickey, but these are photostat copies. I have no objection to their going into the record entirely and completely, but I should have objection to portions of them being put in. The letters to which you refer, Mr. Hickey, are letters which, to some extent, modify the formal contract, and the formal contract would not [fol. 301] have been complete or a true exhibit without the attached letters.

Mr. Hickey: With that explanation, I will proceed to put them in now.

Examiner Brown: This exhibit will be marked complainants' exhibit No. 1, for identification.

Snowden Henry was there upon called as a witness for the complainant and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My name is Snowden Henry. I am employed in the service of the Merchants Warehouse Company as superin-

tendent and have been employed as such superintendent for approximately three years. My duties in that position are more or less a little bit of everything; assistant to Mr. [fol. 302] Richardson in various capacities; soliciting freight; handling various warehouse shipments, and whatever I am told to do, more or less.

The Merchants Warehouse Company handles packing freight principally of a very wide range—nearly everything—practically all package freight, not of an inflammable or explosive character—virtually all such package freight specified in the consolidated freight classification. The Merchants Warehouse Company is engaged in storage business at Philadelphia. It operates approximately 12 warehouses. The location of each of these warehouses is:

The River Front Store; No. 10 Chestnut Street; going down Delaware Avenue we have a warehouse known as Front and Kenilworth; Front and Bainbridge; Franklin Stores; Front and Federal Street Warehouse; 15th and Carpenter Street Warehouse; 31st and Chestnut Street Warehouse; Kensington, at Front and Berks Street, and Shackamaxon warehouse, on North Delaware Avenue, at No. 1055 and 1057.

Each of these warehouses is served by side track connections with the Pennsylvania Railroad Company. Freight is shipped inbound to these warehouses over the Pennsylvania Railroad, the quantity depending on the size of the warehouse; the small warehouses get a small amount and the larger warehouses get considerable. Freight is also shipped outbound over the Pennsylvania Railroad. We get materials from pretty nearly every state in the United States; and it goes out that way—we ship all over the country. At some time in each year some of the outbound shipments probably go to every State in the United States. I do not know how many inbound carloads of freight over the [fol. 303] Pennsylvania Railroad are received by the Merchants Warehouses in any recent month or year.

Mr. Richardson, the General Manager and Treasurer, participated in making claims or bills for the allowance claimed by the Merchants Warehouse Company.

Q. Mr. Henry, I show you an advertisement purporting to be published at page 161 of the Traffic World of January

21, 1928, and I will ask you if you find the advertisement of the Merchants Warehouse Company there, and if you know whether that was inserted in due course of business by the Merchants Warehouse Company?

A. To the best of my knowledge it was; yes, sir.

Mr. Hickey: I offer that in evidence.

Examiner Brown: This will be marked No. 2 for identification.

(The exhibit referred to was thereupon marked for identification "Complainants' Exhibit 2, Witness Henry.")

By Mr. Hickey:

Q. I show you what purports to be a trade publication, Commerce and Industry, issue of January, 1927, and call your attention to page 3 of the publication and ask you if you recognize that as an advertisement of the Merchants Warehouse Company, put out in due course of business?

A. Yes, sir.

Mr. Hickey: We offer that advertisement in evidence.

Examiner Brown: That will be No. 3 for identification.

(The exhibit referred to was thereupon marked for identification "Complainants' Exhibit 3, Witness Henry.")

[fol. 304] By Mr. Hickey:

Q. I show you what purports to be a pamphlet, entitled "American Chain of Warehouses, Incorporated" and ask you if you find the Merchants Warehouse Company listed in that pamphlet?

A. Yes, sir.

Mr. Hickey: We offer that in evidence.

Examiner Brown: No. 4, for identification?

(The pamphlet referred to was thereupon marked for identification, "Complainants' Exhibit 4, Witness Henry.")

By Mr. Hickey:

Q. Mr. Henry, I show you what purports to be a list of names of concerns, point of shipment, and commodity, and I will ask you if these concerns are patrons of the Merchants Warehouse Company?

A. Most of them are or have been; most of them are.

Q. Now, look over the list and point out which of them are not and have not been.

The Witness: I do not recognize the Certain-Teed Products Company.

Mr. Hickey: I offer that list in evidence with the exception of the Certain-Teed Products Company.

[fol. 305] (The exhibit referred to was thereupon marked for identification "Complainants' Exhibit 5, Witness Henry.")

By Mr. Hickey:

Q. Mr. Henry, look at Exhibit 5, the name of the Morton Salt Company. Will you describe the services performed by the Merchants Warehouse Company on shipments of goods consigned to the Merchants Warehouse Company by the Morton Salt Company?

A. In most cases the Morton Salt Company ship a car to Philadelphia to the warehouse; the car is consigned in our care. When that car gets to Philadelphia their Philadelphia representative issues orders on the car and various customers will come and take delivery of the car within 48 hours after its arrival at the warehouse.

What is left over will be put in storage. In this particular instance practically all of the goods go out in the free time. The car is consigned to the Morton Salt Company and their representative will give orders for delivery to the various customers. When those customers present their orders to the Merchants Warehouse, we honor those orders by distribution of the salt in whatever lots these orders call for. I am not sure about this particular one, but in most cases it is a signed order. That salt is shipped in car loads at car load rates. Practically the same service is performed by the Merchants Warehouse Company for the Worcester Salt Company.

The Vacuum Oil Company are tenants in one of our [fol. 306] buildings, and most of their shipments come in and are unloaded and placed in their section.

The Merchants Warehouse Company performs unloading service. It claims a stipulated allowance on each ton of the freight unloaded for the Vacuum Oil Company.

Examiner Brown: To what stipulated allowance have you reference?

The Witness: The warehouse, as I understand, has certain contracts with the Railroad; and these Vacuum Oil Company cars would get an allowance under that contract, to the best of my understanding.

The service which the Merchants Warehouse Company performs for the Williamsport Wire Rope Company is that they unload their rolls of wire and place that wire up in their section; they are tenants of the Warehouse located at Front and Kenilworth Streets. The Merchants Warehouse Company claims an allowance for that unloading service. The service the Merchants Warehouse Company performs for the Rossville Company is the same character of service as I described for the Williamsport Wire Rope Company.

The service the Merchants Warehouse Company performs for the Sterling Products Company is the same service—unloading and placing in their section. The Sterling Products Company is also a tenant occupying space in our warehouse.

The service the Merchants Warehouse Company performs for the Fort Pitt Bedding Company I do not know much about; that is handled at Federal Street, but I think we do the same thing. I think we unload their cars, [fol. 307] although I think we have only unloaded a few cars for them. By the same thing, I mean distribution service—distribution of car loads in 1. c. 1. lots. I am sure they have had car loads in, although I would not want to testify as to that.

The service the Merchants Warehouse Company performs for the Cudahy Packing Company is unloading car loads and distributing their packages in 1. c. 1. lots.

We handle very few cars for the O'Sullivan Rubber Company, but I think it is practically the same as for the Fort Pitt Bedding Company. They are tenants and this is handled in connection with another company. The O'Sullivan Rubber Company have space there in joint account with somebody else in the warehouse. I do not think their goods are received in car loads; I think they come in 1. c. 1.

John B. Astell & Company rents space in the West Philadelphia Warehouse, and their cars are unloaded and de-

livered in their space. In some cases the cars are delivered in the free time. The service performed for the Climalene Company is more or less the same thing; I mean the cars are unloaded and shipments delivered within 48 hours, most of the time, I think, in that case. I think that company is not a tenant of the Merchants Warehouse Company. I think they have a representative here. The service is distribution service that is performed for that company.

The service we perform for the Campbell Soup Company is to store their products and distribute them. They come to the warehouse in car loads at car load rates and we afford the storage service or the distribution service.

[fol. 308] The Richardson & Boynton Company are tenants in the warehouse and their cars are unloaded and put in their section.

Summarizing Exhibit No. 5 as to the remaining customers they are practically all handled in the same way. Either they are tenants in possession of leased space from the Merchants Warehouse Company or else they are customers and their goods come in in car loads and we distribute them in 1. c. l. lots; we distribute the material the same as a freight station, coming within the 48 hours free time; exactly in the same capacity as a railroad freight station, as an agent of the carriers'. I know how a freight station distributes car load freight. I think that any freight station in Philadelphia does distribute car load freight—transport it at car load rates in l. c. l. lots to more than one consignee—that is my understanding. I do not know of my own knowledge that I can substantiate. I can not specify the published railroad tariff authorizing that distribution of car load freight at the railroad freight stations which I have in mind.

The source of my information that any railroad freight station in Philadelphia distributes car load freight in l. c. l. lots to several parties is that I have heard various customers say they could make shipments to these freight stations and distribute the cars out of the freight station the same as they could in the warehouse. One of these customers is the walnut people that ship walnuts. I do not know what they said; that has been two years ago. I do not know the name of the person I talked with. I can not repeat what was said in that conversation. I am not in a posi-

tion to specify any published tariff providing for that patronage.

[fol. 309] Taking up the distribution of these inbound car loads of freight at car load rates—the distribution of the contents to several customers—to the best of my bnowledge—now, I do not handle those orders so I cannot swear to this—but these orders come to us from the consignee who ships the car to the warehouse——

Q. You said the consignee who shipped the goods to the warehouse; did you mean the consignor?

A. In most cases the car is shipped to the consignee in Philadelphia, who may be a representative of the consignor; but the car comes consigned to the consignee at the warehouse.

Q. At the warehouse or in care of the warehouse?

A. John Smith in care of Merchants Warehouse Company.

Q. Well, Mr. Henry, do you know the various officers of the Merchants Warehouse Company?

A. Yes, sir.

Q. You are able to identify their signatures?

A. I think so.

Q. And the signatures of the clerks and office force?

A. I am not sure about all of that; I know them but I cannot promise you specifically.

Q. I show you what purports to be a letter of April 30, 1928, from Mr. George M. Richardson, addressed to the Bethlehem Wood Products Company, and ask you if you can identify that as a letter sent out by Mr. Richardson?

A. That is not Mr. Richardson's signature, but the letter was sent from his office.

[fol. 310] Q. Do you know the signature of his principal or chief clerk, or the others?

Examiner Brown: The witness testified that was sent from Mr. Richardson's office.

Mr. Hickey: I offer that letter.

Mr. Glasgow: As to these letters—they were issued from Mr. Richardson's office. Some were signed by him and some not, but we assume he assumes the responsibility for them.

Mr. Hickey: I offer the letters in evidence and will identify them.

That is Exhibit No. 6, Mr. Examiner.

Examiner Brown: Exhibit 6.

Mr. Hickey: I offer in evidence the several letters which Mr. Glasgow stated had been sent from Mr. Richardson's office, and I identify them as follows:

A letter from Mr. Richardson to the Chicago Jewelers Tool Works, under date of June 16, 1928.

A letter from Mr. Godley addressed to the Alcazar Range & Heater Company under date of June 20, 1928.

A letter from Mr. Godley addressed to George Steers & Sons, under date of June 22, 1928.

A letter from Mr. Godley, addressed to Mr. Calvin E. Alhum, under date of May 17, 1928.

A letter from Mr. Richardson addressed to Kurtz [fol. 311] Brothers Incorporated, under date of May 4, 1928.

A letter from Mr. Richardson, addressed to the Bethlehem Wood Products Company, under date of April 30, 1928.

A letter from Mr. Godley addressed to the Hunter Van and Motor Company, under date of May 18, 1928.

Examiner Brown: Those letters will be marked for identification Exhibit No. 6, consisting of 7 sheets.

(The letters referred to were thereupon marked for identification "Complainants' Exhibit 6, Witness Henry.")

By Mr. Hickey:

Q. Mr. Henry, look at this letter of June 6, 1928, from Mr. Richardson, addressed to the Chicago Jewelers Tool Works and to that part which I will read for you:

"* * * Therefore any portion of your car load shipments delivered within the free period would be handled by us without expense to you."

Now, will you describe in detail the services performed within that free period that would be performed by the Merchants Warehouse Company in making that distribution within 48 hours, starting with the arrival of the car if you will, please?

A. Well, the car would be unloaded and the consignee would be notified that the car was ready for delivery, and

whatever portion of that car was taken within the 48 hours would not be charged storage, and at the end of 48 hours the car would be placed in storage. The first 48 hours [fol. 312] would be free the same as the Railroad would have.

Q. Then, if you distributed the contents of that car load to two persons, five persons, ten persons, or twenty persons, if all that distribution was accomplished within 48 hours the Merchants Warehouse Company would collect no charges from the owners of the goods?

A. That is correct.

Q. In accomplishing that distribution necessarily the Merchants Warehouse Company had to pay the wages of its employees who transferred the freight from the railroad cars and delivered it to those various parties, that is, put it on their trucks.

When the inbound cars arrive the Merchants Warehouse Company transfers the freight of the tenants from the cars to the space rented by the tenant and after that the tenants do whatever they wish with the goods. I am not familiar with the use of leased space made by the Sherwin Williams Company, except that they are tenants in the River Front Stores.

The solicitors of trade employed by the Merchants Warehouse Company are:

Mr. Richardson solicits, I solicit—all of us connected with the company solicit; that is our business—we try to get all the business we can.

The Merchants Warehouse Company does not operate a trucking service of its own to my knowledge. We have several trucking concerns who truck for the Merchants Warehouse Company, the Philadelphia local express, Merchants Parcel Delivery, and various other companies. We do [fol. 313] business with most trucking companies in Philadelphia.

Examiner Brown: Without objection complainants' exhibits 1 to 6 will be received in evidence.

Cross-examination.

By Mr. Glasgow:

I am the superintendent of the Merchants Warehouse Company and have been acting in that capacity for the

last three years. I have general supervision over the handling of its business, of the Merchants Warehouse Company, and when I say handling of its business I mean its physical business or handling of traffic at its warehouses. When freight comes in the warehouse, it is consigned to the owner of the freight or his representative in Philadelphia and for the purpose of delivery it is put on the bill in care of the Merchants Warehouse Company at some designated point where it has a warehouse. That is done for the purpose of enabling the consignee to receive his freight at the most convenient point for delivery in the City of Philadelphia. We have warehouses all over the city, practically. The business is handled in this way, so as to permit the consignee to get the delivery of his freight at the nearest point.

Mr. Hickey: If the Examiner, please, I object to the use of the word "consignee" when the billing is not before us.

When a car load shipment comes in of package freight, the consignee of that freight pays the freight charges and he pays that to the Railroad Company or the agent of the Railroad Company and that entitles him to the delivery of his freight without any additional charge to the freight rate. Sometimes in sporadic cases we collect the freight for the Railroad Company.

[fol. 314] Mr. Hickey: If the Examiner please, if we are to continue all this line, you see a lot of testimony is being built up on the supposition that there is a consignee of these shipments other than the Warehouse Company.

Mr. Glasgow: There is——

Mr. Hickey: And yet, if we get down to the billing there may be, in fact, no such consignee, and my opponent is simply building up a structure here without, as I see it, any foundation for it. He described the inbound carload shipments of freight and how it was distributed by the Warehouse Company. Of course in that case the Railroad Company has only a car load dealing. Now, surely, none of these parties in Philadelphia to whom a carload of freight was distributed in small lots would be glorified in being designated the consignee of a carload shipment. So, I say to you, we cannot get accurate information as to who is the actual consignee of the shipment until we have the billing before us.

Examiner Brown: It is proper to develop the exact facts in this connection. The ruling of the Examiner is that the cross-examination is proper and Mr. Glasgow may continue to cross-examine along any of these lines, but I will instruct the witness that he must testify as to matters within his own knowledge, and testify as to facts only. If Mr. Hickey disagrees with the facts as brought out by the cross-examination it will be within his province either [fol. 315] under the heading of redirect examination or other evidence to prove that such evidence is not in accordance with the complainants' understanding.

Mr. Bikle: May I add this: At Mr. Hickey's request we are going to produce copies of the billing for that period, and they will operate as a check on any verbal testimony. From my point of view I would be just as unwilling as Mr. Hickey is from his point to yield the effect of these written documents to oral testimony.

The Witness: The shipments come in consigned to the owner or to the owner's representative at Philadelphia [fol. 316] in care of the Merchants Warehouse Company. It is my understanding that upon the payment of the freight bill the consignee is entitled under the tariffs to the delivery of the freight to him or such person as he may designate. Then in the delivery which is made of the cars brought into the platform of the Warehouse Company, it is unloaded by the Warehouse Company. It is then separated in accordance with directions to the Warehouse Company, either contained in the bill or from the consignee, as to how it will be separated for delivery and then the delivery is made, if required, in the free time of 48 hours to such persons as the consignee of the freight directs us to deliver it. After the expiration of 48 hours, if there is any in that car load that has not been delivered on the order of the consignee, that is carried by us or our company in its storage warehouse, and thereafter storage is charged against the owner or consignee of these goods.

It is my understanding that our company for its services of receiving this car load of freight, unloading, and doing whatever is necessary to make the delivery of the freight, is paid a certain sum, and that that sum is provided for under contract that we have with the Railroad Company. For the services which we perform in making this delivery, we are paid by the Pennsylvania Railroad.

The consignee or his representative pays to the Railroad Company, or, in some instances, to the Warehouse Company for the Railroad Company, the charges for freight and deliveries that are made against him by the Railroad Company. The service which we perform while paid to [fol. 317] us by the Railroad is, in fact, paid by the consignee or his representative to the Railroad Company in the tariff—in the rate of charges against him. The Warehouse Company does not make any shipment of freight itself—not in the name of the Warehouse Company; they ship for the consignee. The consignee delivers it to the Warehouse Company for shipment, or they give orders on their freight in the warehouse, to be shipped for them, that is, where it is in the warehouse in storage. None of the freight that is coming in, shipped to the warehouse company is consigned to the warehouse company to my knowledge.

By Mr. Glasgow:

Q. Now, Mr. Henry, I noticed in reply to one question of Mr. Hickey's you referred to a certain traffic saying that it was shipped so and so. You were referring to traffic that had already been stored in your warehouse, or to traffic that was delivered to the Warehouse Company for immediate shipment?

A. The Warehouse Company does not own any freight; they ship on people's orders. If we ship it it would be only on receipt of an order from the man who owns the freight, to do so.

Q. When you speak of shipping it out you mean shipping it out from your warehouse for somebody's account?

A. If we make any shipment from the warehouse it would be for somebody's account.

Q. The freight to which you referred was freight on storage in your warehouse?

A. Yes, sir.

[fol. 318] Q. And on the order of the owner you delivered it to the Railroad Company for transportation?

A. Yes, sir.

Examiner Brown: What party is shown as the consignor in the bill of lading in connection with a shipment of that character?

A. In a shipment of that character, it would be stored in the warehouse in some one's name. That person would send an order to the Warehouse Company to have it shipped out.

Examiner Brown: But what party would appear on the bill of lading as the consignor of the shipment?

A. The person who owned the shipment would be shown as the shipper.

Examiner Brown: And the Merchants Warehouse Company would not appear as the consignor in the shipment?

A. No, sir.

By Mr. Glasgow:

Q. Now, when you referred to this Morton Salt Company, I noticed that you referred to the salt "consigned to us"——

A. Consigned to the Merchants Warehouse Company.

Q. In your care?

A. Yes, sir.

Q. Not consigned to the Merchants Warehouse Company then?

A. No, sir.

By Mr. Bikle:

Q. In your Exhibit No. 5 there are sundry instances in which the point of shipment is in Pennsylvania. It is true, is it not, that a number of your patrons are Pennsylvania [fol. 319] firms and industries?

A. Yes, sir.

Redirect examination.

By Mr. Hickey:

Q. Was your answer to Mr. Glasgow that the Merchants Warehouse Company was not the consignee of these shipments, based on the circumstance that the Merchants Warehouse Company did not own the goods?

A. Yes, sir.

Q. The Merchants Warehouse Company actually received those inbound goods and accepted delivery from the Pennsylvania Railroad, did it?

A. Yes, sir; acting as agent of the Railroad they received that.

Recross-examination.

By Mr. Glasgow:

Q. You say that your statement that the Merchants Warehouse Company was not the consignee of the freight was based upon the fact that the Merchants Warehouse Company did not own the commodity; isn't it also based on the fact that the bills that come in show on the face to whom it is consigned?

A. Yes, sir.

Q. And as I understand you, those bills, as far as your knowledge goes, run to the real owner or his representative as consignee in care of the Merchants Warehouse Company?

A. That is correct; certainly.

F. J. Fell, Jr., was thereupon called as a witness on [fol. 320] behalf of the complainant and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I am Comptroller of the Pennsylvania Railroad Company.

Q. Have you produced certain bills or claims, relating to allowances made by the Pennsylvania Railroad Company to the Merchants Warehouse Company?

A. Those are the claims or the bills (producing same).

Q. Is a separate claim presented by each of these several warehouses operated by the Merchants Warehouse Company, or is one claim presented for each of the warehouses?

A. Each one shows a separate claim.

Q. Mr. Fell, I show you a bill under date of May 29, 1926, of the Merchants Warehouse Company to the Pennsylvania Railroad Company, evidently offered in support of the monthly claim which you have just handed to me, which seems to be identified by No. 267,276, and I will ask you to read from that bill the description of the allowance claimed by the Merchants Warehouse Company?

A. (Reading:) "To Terminal Charges on Cars as follows, for the month of May, 1926." It is a printed form.

The form is the same in the month of June as it is in the month of May. The claim for January 1, 1927, is the same form of bill, (producing same) and the same language on the bill. The latest bill or claim that I have before me is May, 1928, and also reads, "To terminal charges on cars as follows."

Mr. Hickey: I would like to ask counsel for the Merchants [fol. 321] Warehouse Company is there some way that I can get in this record in a short time an indication of the annual amount of the allowance claimed?

Mr. Glasgow: I have no objection to admitting that the cars that passed through the terminal of the Pennsylvania Railroad and this warehouse under the contract with the Pennsylvania Railroad Company are substantial in number; and that the revenue from it is substantial.

By Mr. Hickey:

Q. Mr. Fell, did you produce the vouchers in connection with those claims?

A. I did.

Q. Is it your understanding that no part of these allowances were apportioned to connecting lines?

A. None that I see on the few bills I have examined.

Q. Will you look at the bill for the month of May, 1926, and then look at the bill for the month of May, 1928, and see if that fact is established by each of these two bills?

A. May, 1926, so far as I can tell from this voucher, it was borne by the Pennsylvania Railroad.

Mr. Hickey: Mr. Bikle, would it be consistent to not take up time here and have a stipulation that the claims and the checks produced by Mr. Fell reflect payment of the allowances at the rates specified in the contracts and agreements Exhibit No. 1 and in Pennsylvania Railroad Tariff G. O. I. C. C. 14400?

Mr. Bikle: I can say, Mr. Hickey, that that is the inten- [fol. 322] tion. I mean if there is any failure to do it it is an error. We think they do, sir.

Mr. Hickey: Is there any objection to that, Mr. Glasgow, that we proceed on the theory that they do?

Mr. Glasgow: None in the world.

Mr. Hickey: Then I offer in evidence the statement of the allowances, which is reproduced from Pennsylvania Rail-

road tariff G. O. I. C. C. No. 14400. This reflects both allowances to the Merchants Warehouse Company and to the Quaker City Cold Storage Company.

Mr. Bikle: We will check that, Mr. Examiner, and if we have any different understanding we will let you know, sir.

Mr. Hickey: That is agreeable.

Examiner Brown: Without objection it will be received as complainant's Exhibit No. 7.

(The document referred to was received in evidence, marked "Complainant's Exhibit No. 7, witness Fell," and the same is forwarded herewith.)

Mr. Hickey: May I also have a stipulation or agreement that these claims and checks show payment of allowances by the Pennsylvania Railroad Company to the Quaker City Cold Storage Company at the rates specified in Pennsylvania Railroad tariff G. O. I. C. C. 14400?

Mr. Bikle: That is what we understand they do, Mr. Hickey. I mean we have not rechecked all of these, but that was the intention.

[fol. 323] Mr. Glasgow: I understand Mr. Bikle's qualification is only to cover clerical error. The account, the amount of it, is intended to be in accordance with the contract and the tariff, and if it is different it is a clerical error.

Mr. Bikle: That is what I mean.

Mr. Hickey: That is sufficient.

Mr. Bikle: Just as in the other case.

The Witness: The claim of the Merchants Warehouse Company for the month of May, 1926—the aggregate of the claim paid for that month was $10,485.09—May, 1927, was $9,615.59, for every one of the warehouses for which the claim is rendered. October, 1927, was $18,695.66.

Cross-examination.

By Mr. Bikle:

These payments were charged to operating expenses; where payments are made by the company on account of allowances to shippers for service rendered by them in connection with their own shipments, such charges are charged to Account 101, freight revenue, that is, deductions from revenue, so that in the accounting for these pay-

ments there is a fundamentally different method pursued than in the accounting for payments of allowances to shippers who perform service on their own shipments. It is the function of my department to audit these bills. The basis of these payments is the contract.

BENJAMIN ABBOTT DICKSON was thereupon called as a witness on behalf of the complainant and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I am employed in the service of Mr. Walter A. Bailey, a complainant in this case. Mr. Bailey is engaged in the [fol. 324] warehouse business under the name and style of Walter A. Bailey trading as Bailey Warehouses. Mr. Bailey has operated warehouses in Philadelphia approximately 10 years. Our general offices are located at 620 South Delaware Avenue. We operate two locations of warehouses; one bounded by Delaware Avenue, South, Swanson and Bainbridge Streets, and the other bounded by Delaware Avenue, Tasker, Water and Morris Streets. The value of our warehouse facilities is about $2,365,000. Our business consists in inducing or soliciting people to ship carloads of merchandise in to us, and our customers can be classified in this way:

Out of town manufacturers who ship carloads into Philadelphia for distribution by us; brokers and sales agents who have offices in Philadelphia, who receive merchandise by carloads, which we receive and distribute for them; also there are local manufacturers who receive raw materials, which we handle for them until they are ready to use it. That carload freight is transported at carload rates. The outbound freight is a considerable portion of our business. We load cars and ship for local manufacturers or manufacturers out of town or for sales agents or brokers. Those people in Philadelphia patronize our warehouse instead of receiving their own inbound freight and shipping their own outbound freight because we have the facilities for handling them. To ship or receive cars you have got to

have carload sidings, platform sites, sites to warehouse and store. Also you have to be equipped to load various kinds of package freight and sometimes bulk material. A great many of these people in Philadelphia do not have such equipment. Some of them have not even offices, let alone warehouses.

[fol. 325] We have some Philadelphia customers who have their office in their hat. That is, they will have a home address, or they may have in Philadelphia their own home out in some remote suburb. Naturally, for a customer of that kind we have to take care of receiving all his freight and do all the shipping for him, because he has neither the facilities nor labor forces nor has he the information to do it.

Those who have offices there are also not equipped to ship, and we receive and ship for them. That is, they have office space. They may have just desk space, or a suite of offices, but no siding, no warehouse and no facilities for handling or distributing a whole car or parts of a car, and so they come to us and ask us to receive and ship for them. Their orders come to us by United States mail or by telephone confirmed by U. S. mail or messenger.

I am thinking now of a customer who receives carload lots, who rents his desk in somebody else's office in the Central Office Building in Philadelphia. I would say he was half a mile from carload sidings and has only desk space. These customers in Philadelphia are sometimes sales agents or brokers and they will receive orders for various kinds of merchandise and they will draw on us to take care of filling these orders or distributing those cars, or they will have cars shipped into Philadelphia for us and we will distribute for them. Such a sales agent may have half a dozen different lines, or may represent one firm or have half a dozen different lines. He may represent five or ten or twenty different manufacturers in different parts of the country. He just conducts a general sales business in Philadelphia and has office space there, sometimes not even [fol. 326] that. We have customers who have no offices and in some cases even no representatives in Philadelphia, and they will ship carload merchandise to us at carload rates, and we will unload the cars, ship, it might be, five and it might be six l. c. l. lots, or distribute in the City of Philadelphia, five or six or a dozen lots out of that car. In that case we do everything for him, even collect charges on the

merchandise, pay the freight. We will even pay the demurrage and we will even collect for his merchandise, plus storage and handling charges, plus freight prorated per package. Sometimes we collect the invoice prices. His distribution of inbound carload freight was in l. c. l. lots. That comes to us in carload lots at carload rates. We may reship l. c. l. lots, or we may distribute five, ten or twenty smaller lots, distribute them in the city of Philadelphia and its environs, or distribute a series of l. c. l. shipments.

We have customers all over the United States and some abroad that do this inbound shipping in Philadelphia which I describe. They are very largely manufacturers or wholesalers. Generally they will be wholesalers, manufacturers, and also commodity brokers for raw material commodities. There are a large number of well known concerns that use merchandise warehouse distribution of carload freight in the manner that I have described. There are hundreds of nationally known concerns that do that. They use that distribution service not only in Philadelphia but in the other prominent cities.

Through the Bailey warehouses we handle and are equipped to handle all kinds of package freight listed in the official classification except certain items which we are not [fol. 327] allowed by rule of the Philadelphia Board of Underwriters to take. That excludes hazardous explosives, stuff that is fire hazardous, and even household furniture second-hand. Our warehouses are served by private sidetracks connecting with the Pennsylvania Railroad, the Baltimore & Ohio Railroad, and the Reading Company. This freight comes to us over all those three railroads, into our warehouses, and we will ship out over all those three railroads out of our warehouses. As to how we get this warehouse business, we solicit it. We advertise for it. We send out direct mail letters. We use every legitimate means of attracting business. As I say, mainly the three methods, solicitation, advertising, and direct mail.

We are here complaining about the allowances made by the Pennsylvania Railroad to the Merchants Warehouse Company, the Quaker City Cold Storage Company, and allowances made by the Reading Company to the Pennsylvania Warehouse and Safe Deposit Company and the Philadelphia Warehousing & Cold Storage.

The Baltimore & Ohio also make allowances to the Pennsylvania Warehouse & Safe Deposit Company.

Mr. Bailey operates what is commonly called a merchandise warehouse business—public warehouse business. This Quaker City Cold Storage Company operates what is known as a cold storage warehouse business. Nevertheless, we have complained and we do complain of allowances given to this Cold Storage Warehouse concern resulting in a [fol. 328] discrimination against the business of Mr. Bailey because there are several commodities which we can take in the colder months of the year and even something in the warm months of the year which we can take and which they also go after, and that discrimination operates against us in the solicitation of those commodities.

Our business is competitive with that of the Cold Storage Warehouse Company. There are certain commodities like minetta, bulbs, figs, dates, milk products. The other warehouse companies that receive these allowances compete with us in the solicitation and handling of warehouse business. The allowances have been used against us in that competition. They are used against us every day that we are soliciting competition. It works out this way: Take the example of the flour, the storage rate in effect on flour now is 9 cents a barrel, with no labor charge. That rate was established by the subsidized warehouses. Warehouses like the Bailey warehouses, who receive no pay from the railroads for unloading cars cannot afford to unload carload lots of flour and then receive no labor charge for that service from the customer. As a result of that, we have given up the solicitation of the flour business. If we get it we would lose money. In other fields it works out the same way. The labor charge which people can afford to unload stuff for scales from the regular charge down to zero, whereas we have to have a labor charge which somewhat approximates our cost of handling in order to take the business. The storage rate is about equal, with no labor charge, or being able to give away free labor charge they can lick us in [fol. 329] direct solicitation by that advantage. I will give you two examples just how this labor charge prevents us from getting the business and just how this free labor charge that I refer to enables our subsidized competitors to get the business. One is a case where we meet the busi-

ness, but due to the competition of the subsidized warehouses we were obliged to take it and seriously cut our regular rates. I am thinking of a Chicago furniture concern, who are not a customer of ours, and we unloaded their cars for nothing, merely to meet the competition of the subsidized warehouses at the time when they were making their Philadelphia warehouse connections. All we got from that concern is the storage that is paid for the use of space, but we give them the labor of unloading their cars free.

In another case where we lost the business, the commodity happened to be cement, and it happened to be 100 pound bags of cement. I signed in with a rate of 3 cents for labor and 2 cents for storage, and the man laughed at me. He said he could get his cement stored without any labor charge whatsoever. I tried to equalize by insurance, or by persuading him that our service would be equal or better. It was a question of dollars and cents with him, and I lost the business.

This labor charge is referred to in Exhibit No. 6—the letter to the Alcazar Range & Heater Company, dated June 20th. There is a handling rate here of 25 cents per stove, and a storage rate of $1.

The letter from Mr. Godley to Mr. Steere, under date of June 22, 1928, contains the following reference to the free labor service in that letter. "There would be no charge on orders filed with us before the car is unloaded, and hauled by your customers within 48 hours after the arrival of the [fol. 330] car. If not hauled within that 48 hours the regular storage and labor rates would apply."

I will state the several costs incident to the putting of this freight through warehouses in Philadelphia, and bring out that labor item so we will know just what it means.

We trade with Chicago. I will tell what all the charges are from Chicago until it is distributed: A carload of merchandise starts from Chicago, either prepaid or collect. It rolls into the yards in Philadelphia. The yard will call the warehouse—the yard in our case will call us up and say "We have got a car consigned to you." The car is switched to the siding and the seals are broken and the car is unloaded.

The second item is placing, labor, taking the merchandise out of the car, putting it on the platform and checking the car.

This proposition means that because they are paid to unload cars a man can ship a car into them, and if he removes the whole car within 48 hours it will not cost him a cent. It will cost him the freight rate—the carload rate. And then he can take it out in one lot or five lots or six lots, as he pleases, and if he gets it out within 48 hours there will be no charge for that car. That is, for handling charge through the Merchants Warehousing Company over the Pennsylvania, no charge in addition to the freight charge—no labor charge—no labor charge for distribution of that carload in l. c. l. quantities. He can take it out in as many lots as he pleases, provided he gets it out within 48 hours.

If the Bailey Warehouses sought that business in direct competition with the Merchants Warehouses we would either have to make them the same proposition to meet the [fol. 331] competition, or give up hope of the business. If we made the same proposition, that would mean we would unload the car, and as much as they would unload in 48 hours would give us no revenue, or it would mean that we would donate free labor. We would have to work for nothing—we would give free labor on as much of the car as is taken out in 48 hours. That would involve the use of warehouse structures, equipment, cost of maintenance, and repairs of the buildings, equipment taxes and also wages of the laborers used in transferring that freight from the car at Philadelphia and distributing it in small lots to the various parties it went to and we would get nothing—not a cent—no compensation whatsoever for the service. As to whether we would leave these commodities in the cars for 48 hours or remove them to our warehouse, in order to make deliveries in several small lots they must necessarily be removed from the car and assorted, in some cases. We would perform that labor ourselves. If we had it we would take it all out of the car and put it on our platform, in some cases—it depends on what the commodity is.

My point is, if it were an ordinary commodity where one box was a- good as another that we might have a truck go up and take part of the car and draw ten cases for Tom Jones and ten cases for Bill Smith, but if it were an especial

makeup of boxes in the car for individuals we would have to unload the car and spread it out on the platform and then make the deliveries individually. As a matter of fact, we would probably in all cases unload the cars to get the cars out and clear our tracks so that we would have to perform the labor of unloading the car.

[fol. 332] By Mr. Hickey:

Q. Do you know of any instance where through the offer of that free distribution service the subsidized warehouse companies have taken certain business away from the Bailey Warehouses?

A. Yes, sir.

Q. You can state the name, if necessary, can you?

A. Yes, sir.

[fol. 333] When I refer to subsidized warehouses, I include within that term the warehouses specified in our complaint as alleged to have been subsidized.

I know of instances where the Bailey Warehouses have been compelled to shrink their normal warehouse charges because of the allowances granted to the warehouse companies receiving those allowances and I could name them if asked to do so. Having in mind our larger accounts a large number of those are affected by that, that is, shrunk to get this free labor service. It works out that all the well-known, big national concerns naturally are solicited by the warehouses with special contracts as well as by ourselves, and in all those cases we have to meet this competition, and it results in either our losing the business or our shrinking our normal charges to meet that competition.

There are a fairly large number of business concerns in this country who customarily use merchandise warehouse distribution whose business that we have abandoned hope of getting because of the allowances paid to our competitors and that free distribution service described in Exhibit No. 6. There are a large number of such accounts that it is useless for us to solicit. Instead of naming these concerns, I can deal with them by classes or by commodities. One large class would be food stuff merchants and brokers who will receive carload lots sent to warehouses in Philadelphia for distribution, and on such classes of commodities

it is useelss for us to compete, with certain of them who have done business or are doing business with the warehouses who have special contracts.

[fol. 334] Then another classification would be manufacturers of standard brands, particularly the manufacturers whose commodities make them use a great many carload shipments every year—that is, would naturally attract the warehouse special contracts because of the large tonnage of their shipments. Those fellows are doing business with the special contract warehouses and are pretty hopeless for us.

I mentioned the hopeless state of our getting the flour business a few minutes ago. It really amounts to this, that to deal with the great bakeries a barrel should have a storage rate of 15 cents, and the normal labor charge on a barrel like a flour barrel is 10 cents. As I said before, flour in barrels is warehoused at 9 cents a barrel in Philadelphia, with no labor charge.

With the warehouse not receiving an allowance for unloading of cars, they cannot hope to handle flour at 9 cents a barrel, when the regular rate should be 15 cents and 10 cents.

The Bailey warehouses have handled flour and we are equipped to handle flour. It is a nice business and it is good warehouse business, but in view of the allowances from the special contract warehouses we have not got a chance to get in. We are not handling flour at the present time. We have not had any flour certainly for a year. We have not stopped soliciting the flour business. We still go after it and try to get it, but as I say, if the man who deals in flour has had the rates given him that the special contract warehouses get, we cannot hope to get his business. We just cannot compete.

Mr. Bailey operates a warehouse which formerly was used by the Merchants Warehouse Company in handling flour. The name and location of that warehouse is buildings [fol. 335] 14 and 15 at the northern end of the block bounded by Delaware Avenue, South, Swanson and Bainbridge Streets.

The Merchants warehouses were operating in the northern half of this block from 1921 to the summer of 1923.

We bought the lower half of the block and were operating in the lower half of the block from 1922 continuously up to the present. When, in 1923, Mr. Bailey bought the upper half of the block he moved in, and we now have the entire block. While we were operating in the southern half of this block the Merchants Warehouse Company, operating in the northern half, received allowances on the cars unloaded at that warehouse, but when we moved into those two buildings the allowances were withdrawn on those two buildings, and while we were there side by side they had the allowances and we did not. There was a party wall between the two buildings at that time.

We can not pass this discrimination on to our patrons. We have to stand the brunt of the whole discrimination, because we cannot go to our customers and ask them to pay us such an overwhelming difference in costs for warehousing service, and ask them to pay us, we will say, for labor when they can go to one of the special contract warehouses and get 48 hours free delivery and labor much lower than we can give it to them. They will not do it. It is just as if you were going to buy the same commodity in one store or the other store, if one store asked half what the other did, you would buy in the cheaper place. It being a regular market proposition, we cannot pass it on. We have to absorb it. If we passed it on it would result in our customers transferring their patronage to competitors receiving the allowances.

[fol. 336] About 75 per cent of the tonnage of freight handled at our warehouses requires railroad transportation. If we handled only the local business not transported by railroad to or from our warehouses the revenue from that local business would not produce a reasonable return on our investment and would not produce a reasonable income on our property. I do not think it would pay taxes. We would starve to death. We are dependent on the freight which is transported to and from our warehouses by railroad. That is the life blood of the business.

The status of the Bailey warehouses is that it is a proprietary interest owned and operated by Walter A. Bailey trading as Bailey Warehouses. Walter A. Bailey is not incorporated and has no partners in the business with him. The services of the Bailey Warehouses in the warehouse

business in Philadelphia do not differ from the services of warehouses in Philadelphia generally. We do exactly as any public warehouse does in the way of distribution service. Our warehouses are located along the lines of the Pennsylvania Railroad. We have one belt line siding, pure Pennsylvania siding, another belt line siding and a Baltimore & Ohio siding. We own those sidings. We leased one of our sidings and the ones at Tasker Street are owned. The status of other warehouses as regards ownership or lease of sidings I cannot answer.

There is no difference, that I know of, with respect to the transportation conditions surrounding traffic into our plant as compared with traffic into the warehouses of other warehouse companies in Philadelphia. We have approached the defendants in this case in an effort to have them give us similar allowances and they did not choose to accord us the [fol. 337] privileges given the other warehouse companies. We have a letter from the Pennsylvania Railroad, I remember, in which they simply said they could not see their way clear to do it. It was just a refusal without very much explanation.

We can handle certain cold storage commodities, like minetta and bulbs, but we have not got a regular cold storage installation.

Cross-examination.

By Mr. Glasgow:

I have been in the warehouse business three years in Philadelphia and in Indianapolis I was traffic manager and manager of warehouse. I was in that business practically all my business life. I mean it has been my life business, the warehouse business, except when I was in the army.

Mr. Bailey has been in this business since about 1918 and then for the first time he embarked in this warehouse business. He had been previously in the rope and twine business. He started by taking a city block, bounded by Delaware Avenue, Tasker and Morris Streets, the old John T. Bailey Company plant, and converted that into warehouses, about 200,000 square feet, and then it has grown until now we have additional warehouses to that with which we originally started. Our insurance plan shows seven addi-

tional warehouse buildings and that has grown to that extent in the last ten years from the original one that I spoke of. We have not expanded since 1924. That grew, between 1918 and 1924, about six years.

The Bailey Warehouse Company does a modest business. I would not say a pretty sizable business, I have got to have [fol. 338] some index on the basis. We are not satisfied. I would not describe it as a prosperous business. Well, he stays in it. We have had some of our customers taken away by the Merchants Warehouse Company and some by the other warehouse companies here complained of. We have tried to take some of theirs and I suppose we have. A large number of our customers have no warehouses. Some of them have not got any offices. Some of them have offices in their hats and in other cities and others have their offices, if they have any at all, at their homes. Then some few or some of them have offices but none of them have warehouses where they could handle this business themselves—differentiate there, sir, between some of our customers who are tenants of ours. Some have their own warehouses, but we get their overflow business. The larger part of the people who are dealing in that kind of business in Philadelphia have no warehouses of their own but rely upon the public warehouses for this business. Our business in comparison with that of the Merchants Warehouse is much smaller and they serve a great number more than we do of people in Philadelphia who are availing themselves of the services of public warehouses. They are serving more than we do I believe.

By Mr. Glasgow:

Q. Your purpose is to either require that this allowance be made to you or that the expense of it be put on those that are now receiving through the warehouses under contract; is that your purpose?

A. No, sir, that is not our point of view at all.

Q. What is your point?

A. Our idea is here are a number of people in Philadelphia engaging in the warehouse business and they ought to have an even break, and they have not got it now, and if the Commission saw fit to withdraw these allowances, why [fol. 339] we would all more or less start from scratch.

Q. In other words, in order that you may get that allowance or that nobody will get the allowance you propose to put that expense on the shippers of Philadelphia. Is that not right?

A. No, sir.

Q. That is pretty near it, is it not?

A. No, sir. It is too absolute to be true. There are a lot of little things in it, like you talk about of this additional expense—in some cases where the special contract warehouses receive payment from the Pennsylvania Railroad for the labor of unloading their cars, they turn around and in addition charge a labor charge to their customers, thus being paid by two people for the same service. If you abolish the charges and thereby start from scratch, or will get fair pay from the man that receives the benefit of the warehouse service, and not get in on two sides. Let us illustrate. Suppose ten cars come in today to the Merchants Warehouse Company and are unloaded and distributed in 48 hours to the consignee or consignee's order. The shipper under those circumstances, or the consignee, as the case may be, pays nothing more than the freight rate to cover the whole service. If one car comes into our warehouse and is unloaded by us and distributed exactly the same way as the ten to the Merchants Warehouse Company the shipper, or the consignee, as the case may be, in our warehouse has got to pay that labor cost for doing that in addition to the freight rate.

My proposition is on the ten cars in effect is a rebate for people to ship by the Pennsylvania to warehouse it as an [fol. 340] inducement to draw more and more traffic. It operates like a rebate from the point of view of large shippers. It operates like a rebate.

Our company is engaged in soliciting business all around the country. So is the Merchants Warehouse Company and we meet in competition.

I estimate the value of the warehouse properties of Bailey at $2,360,000, figured the grounds worth at about $5 a foot at South Street and the ground at Tasker Street is figured worth about $4 a foot, our ground areas plus building areas, plus improvements. That did not represent the cost, because some of our buildings were built years ago. That is the fair value or duplication value of the properties. Some of them were bought some time ago. The last purchase

made was the 14 and 15 buildings, which were purchased in 1923. These were at South Street and is worth $5 a foot, the ground. In those two buildings, the ground area is about 20,000 feet—20,000 at $5.00—$100,000, for the ground, and then you have got the buildings. I do not know what the buildings cost when we bought them. When I am estimating that $2,360,000 and saying that we cannot make a fair return, I mean we certainly cannot make a fair return on the valuation of our property as of today. I consider a fair return—I would say 6 per cent of our valuation is a fair return. I am putting it in minimum terms and we cannot earn that much—we have not done it yet.

We do not handle things like eggs and butter and apples and things of that kind. We are not equipped for it. We have some tenants who do have cold storage but that would be their own property and not public warehousing. They are equipped for that kind of business—that is a large part of their business as far as I know. We do not handle it and our tenant handles it in the leased space allotted to him. [fol. 341] We may help him with the labor of his cars, that is all.

By Mr. Bikle:

In referring to the connections we have with the railroads, I spoke of the belt line. Through that line we have access to all three roads that serve Philadelphia. I also referred to the fact that approximately 75 per cent of our business is business that has moved or will move over the railroads and that I said came from and went to all parts of the United States. A minor fraction of that originates or goes to Pennsylvania points. We do have business connections throughout the State of Pennsylvania. We ship to and receive from points in Pennsylvania. We do not have an ownership interest in the freight that is handled to and from our warehouse. Take the inbound freight first that is consigned when coming to our warehouses by the Pennsylvania Railroad. It will come in to John Jones care of Bailey Warehouses, and on the outbound business, why, sometimes we have the customer's name appearing, with our name as the shipper, and sometimes we simply have our own name on it. Sometimes we do sign the bill of lading in our own name, as to which is the customary and more frequent practice, if there is a difference between the two—

I would think it would be about fifty-fifty. In any event those outbound movements are all in accordance and in compliance with the owner's instructions. It may not be the owner who gives us the instructions. It may be an agent or it may be a broker or it may be—In connection with all the outbound shipments we deliver them to the railroad for transportation at the behest of some other person and we send them to some destination that somebody else [fol. 342] tells us to send them to and somebody who has a right to tell us what is to be done with that freight. That is, we are carrying out somebody's instructions when we make these outbound deliveries to the railroad. In other words, we ourselves are not determining for ourselves where to ship them. Very often we determine the routing, but your point that we get instructions, shipping orders, is correct and we determine the routing because the owner of the property or his agent leaves it to us to do that sometimes. In other words, he has the right to do that if he elects to do so, as between us and him. Now, I referred to the fact that if a carload of freight came to Philadelphia and was handled through the Merchants Warehouses and was delivered within 48 hours the consignee taking it away, say so many barrels one trip and so many another, he would not have to pay anything for the handling at that point. That is not exactly true at the regular railroad station operated by the railroad itself and not through these special contract warehouses. It differs in several essential points. In one, if you are getting a carload of freight delivered through a regular freight station at that freight station the railroad company takes the goods out of the car and puts them out on the platform. That is one thing they do. Then you come up to get them and you sign your receipt to the railroad and there is your bill of stuff and you can haul it out. You may have to put a man to sit on that pile and watch it while you are away. That differs from the warehouse practice in the one point that the warehouse is the custodian, and though we may be taking it out in dribs we keep our eye on it. In the case of the freight house once they get the receipt you have to hire a man to sit on the pile [fol. 343] until you take it away. It is very valuable stuff. Then you can take the stuff away in dribs, but you have to haul it away. The warehouse distribution proposition is entirely different. Your carload may come in by the Penn-

sylvania Railroad the same way. Then the warehouse has the responsibility of taking the car for you, watching your stuff, if you take it out in 48 hours or in a week; see that the right men get the right stuff; that the car is in good condition, and they will even collect charges from the various people who come to get parts of the car, plus handling, and they will pay the demurrage on the car, if anything. I am talking about carload. The differentiation between the warehouse and freight station service is that the warehouse does all of these other things which the freight station service never contemplates. In that answer I am assuming the railroad will not give very much protection to the freight once we put it on the platform. But apart from that, as I view it, the owner can come there and take it away in the same part deliveries until the free time expires, without being subject to any charges. I referred to the fact that sometimes we paid freight and demurrage, etc., on cars that were handled through our warehouse. It is not true that in the cases where we did that that constituted a part of our bill against the owner or his representative, of those goods. No, sir, we do not pass demurrage on, that is our party, and in some cases we do not pass on the whole freight. Part of our service, different from a freight station, part of a warehouse service is to take a man's cars and unload them, and if we do not unload them promptly so that we incur demurrage charges, that is our fault. Under these circumstances we would not charge him the full freight charges. [fol. 344] Where we get a car, as in this case, you might have a shipment coming in competing against the special contract warehouses on which you are compelled to shrink your charges materially—say give no labor charge. We will turn around and bill him less than our combined freight and handling and storage.

My answer was no, not in all cases did we pass on the full freight, and in some cases where we shrink charges we did not pass on the complete charge to the consignee, because it might be to several or to one. In the majority of instances we pass on the entire freight charges.

Q. It is only in a very exceptional case that you shrink the freight charge?

A. I would not make it "very." That is too small. There is too much competition from the contract warehouses to make it very exceptional.

By Mr. Webber:

We handle more tobacco than anything else, any one single commodity.

As to whether it is customary for the railroad itself to unload carload freight for consignees—frankly, I have never seen it done; I will have to answer it that way.

We have six or seven, possibly eight or nine—six or seven certainly tobacco customers at the present time.

By Mr. Woodcock:

The size of our warehouse originally was 200,000 square feet. The present size is about half a million square feet.

Q. Your investment that you spoke of, $2,365,000, does the greater part of that—I did not mean investment—I meant you valued the properties at $2,365,000—is the greater part of that value related to properties which you [fol. 345] owned when you started ten years ago, or properties acquired since that time?

A. I would say about fifty-fifty. I would like to explain that, that the property which we started with was located way down on South Delaware Avenue and it was necessary to get more centrally located property. Hence the acquisition of the additional property was more or less forced by business policy rather than being the result of tremendous profits reached and reinvested in the warehouse business.

Q. Your reference to the method in which shipments were consigned that moved to you via the Pennsylvania Railroad and your statements regarding those outbound shipments would also apply, would it, to shipments that were handled by the Reading Company and moved into your warehouse?

A. You mean in the method of handling?

Q. No. In the method in which the shipments were billed. You spoke of that being billed John Smith care of the warehouse.

A. Yes, sir, that is, the freight bill will say John Jones care of Bailey Warehouses, in general.

By Examiner Brown:

Q. Our investment figure covers just the physical properties of the Bailey warehouses, there is no good will in that. It is based on a real estate appraisal of land and buildings and equipment, such as elevators, platform and things like

that, handling equipment, in other words our physical property which we use in the warehouse business.

CHARLES P. FOSTER was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

[fol. 346] By Mr. Hickey:

My name is Charles P. Foster, employed by the Northeastern Warehouse Company which is a complainant in this case, as solicitor and traffic manager, and acting assistant superintendent. I am also a stockholder in that company. The Northeastern Warehouse Company is engaged in the general storage business, merchandise, except of course anything that is too hazardous, or furniture, household goods, we do not accept it. The Northeastern Warehouse Company has been engaged in the warehouse business in Philadelphia about 25 years. I have been in the service of that company 18 years.

Our office is located at Sedgley and Erie Avenue, Philadelphia and we have a warehouse at that location. We have a capacity for indoor storage of about 175,000 square feet. Then we have half an acre of ground, of course not covered, for anything that requires outside storage. It is a building of five stories and basement; cellar. We conduct our warehouse business in that building. We are capitalized at $500,000. Of course the value will exceed that. If you want an estimated value, why I would put it at about $800,000. We conduct a general warehouse business, receiving and delivering merchandise, unloading and moving cars, etc., a general merchandise warehouse business, public warehouse. We have sidings at both the Reading Company and the Pennsylvania Railroad Company. I would say about 85 per cent of the receipts of all our goods come in by rail, and of course there is some which is trucked to us by teams. About 80 or 85 per cent comes in by rail. It may exceed that a little. The outbound I guess would be about 70 per cent by rail. If the Northeastern Warehouse Company had only that local business not requiring railroad transportation inbound or outbound, its business

would not be profitable. There would be no Northeastern [fol. 347] Warehouse if we did not have the outbound business by rail, because there would not be sufficient business up there to warrant having any warehouse.

To the Northeastern Warehouse Company railroad transportation is of very great importance, because we have sidings at both railroads, and, as I said before, if it was not for the railroads and the merchandise that came in by rail there would be no warehouse there. We are not located right upon a river front, you know, and therefore we have to depend upon rail for our business both inbound and outbound.

For the Northeastern Warehouse Company to get business we advertise; advertise in magazines, circulate calendars, and we solicit persons all over the city and by circular letters through magazines, distributing calendars, and through our New York representative.

Q. I show you what purports to be one of your circulars and I will ask you if you can identify it as such?

A. Yes, sir.

Mr. Hickey: I offer that in evidence.

(The document referred to was received in evidence, marked "Complainant's Exhibit No. 8, witness Foster.")

The railroads we deal with in obtaining property for inbound transportation and also in obtaining property for outbound transportation are the Philadelphia & Reading Railroad and the Pennsylvania Railroad. Our warehouse is served by private sidings: We have one siding on the Pennsylvania that comes in the center of the building, and the other one on the Reading goes along lengthwise. We [fol. 348] have capacity for about three cars on the Pennsylvania and about eight or nine on the Reading.

The services performed by the Northeastern Warehouse Company on our inbound freight are: We get notice from the railroad companies of the cars' arrival and we order them on our sidings, break the seals and discharge them, place the contents of the cars in the warehouse. That is the unloading part. Of course the loading part we do all our handling of the merchandise in the cars, load it in the cars, seal them, send the bills of lading to the railroad station, get them signed and forward them.

On the inbound shipments we receive a communication from the owners of about when it is expected to arrive. We notify them upon the arrival of the cars and then they tell us as to what to do. In other words, if any separations are to be made they give us the orders, or otherwise, in writing, and we place the contents of that car in accordance with their directions, in the warehouse.

By separations I mean this: For example, there may be, of course you take wools, there may be three or four different grades of wool in one car, and when that goes out there may be one grade that would go out first, and another grade would go out second, and the third grade would go out last, and therefore of course we separate those different grades in accordance with the marks when they are unloaded from the car, check them in the warehouse and pile them in the warehouse separately. As a general thing—sometimes we receive the orders for those separations by mail and then again we will receive them by phone, but if they phone, as a general thing they always confirm it by letter through the mail or else messenger.

Now about property distributed from our warehouse by truck service—goods which are received by the warehouse [fol. 349] and sold to be distributed in Philadelphia, when the teams come for that they of course have an order from the owner or the representative of the owner, and then we deliver those goods to the sill door of the truck for delivery. For example, there are many cases where mills, of course, have those goods in the warehouse, and they send their own trucks for those goods after the order has been placed by the owner. It may be a mill to whom the owner has sold those goods, and that mill comes for the goods and they will be delivered upon their order.

As to whether this trucking to which I refer involves the distribution of carloads to the various mills in Philadelphia or several parties in Philadelphia—well, carload lots that come in as a general thing are consigned to a firm which handles that commodity care of the Northeastern Warehouse Company. Then they sell them to different parties. They may of course sell a portion to one concern and a portion to another, and so forth, and give them orders upon us for whatever quantity they have sold to this firm. We honor that order and deliver to the trucks at the sill door. We distribute the carload in small lots in accordance with those orders.

The largest percentage of our patrons are located in Philadelphia. There are very many of those patrons in Philadelphia who have offices only. Some may only have desk room in an office. Then again there are others who perhaps may rent a building, but that building not being sufficient to take in the goods which they handle therefore necessitates their having such storage space. Besides that, in handling bonded goods they could not take the bonded goods into their own place even if they had sufficient room for it there. Of course we have some out of town customers who have representatives come to Philadelphia to [fol. 350] sell the goods, and consign the goods to our care, and then in turn send their representatives here to sell, and then we honor their withdrawal orders from the warehouse to whomever they sell the goods.

Boger & Company is one of our customers. They handle cotton and cotton waste. They of course have their cotton came from the south consigned to them in our care and we store it, and then honor their orders as they sell, either in town or out of town, wherever it may go. They have no facilities for receiving carload freight. They have only an office. Otherwise, one floor in a building. That is raw cotton. This office is in a prominent office building or a district of the city where property values are high. It is not exactly what you might call an office building. It is a building rented out. They only occupy two floors. It is located on Chestnut Street. So there is very little cotton stored on Chestnut Street. There is a reason for that most undoubtedly. In the first place the insurance rate would be pretty high. That is in the fire belt. In the next place I do not think the insurance underwriters would insure a building if it had cotton in it down in Chestnut Street. Those people who have business places on Chestnut Street to receive a carload of cotton in Philadelphia, they have it consigned right from the South to us, or otherwise in our care. They employ us as a warehouse to receive their cotton. Chestnut Street used to be one of the principal business streets of Philadelphia, but since they got the Delaware River bridge I guess it is kind of diminishing. Property values on Chestnut Street between 8th and Broad Streets are not so low that they could afford to use those facilities for receiving carload freight. The value has gone up between 8th and Broad, but the value has receded between

[fol. 351] 8th and Delaware Avenue. Then there is some reason why people having business places in that section of Philadelphia employ warehouse concerns to receive their carload freight. Of course it would be too valuable for a person who had a building there, even at the present time, to try to store anything. As I said before, it is in the fire belt, and the insurance rates would be very high, and of course warehouses have to be built where the rental is low and property or ground is less valuable. Otherwise they could not come in to the center of a city and establish a big warehouse.

The Northeastern Warehouse Company competes for business with the Merchants Warehouse Company and the Pennsylvania Warehousing & Safe Deposit Company. We have had difficulty in obtaining business in competition with those two companies very frequently. Take as an example cotton or cotton linters. There was a time a few years ago when we were stacked up with cotton linters. After the Merchants Warehouse Company took over the warehouse there where the old sugar plant, the Franklin Sugar Refining plant, was where they are located now they of course began to store cotton linters. That plant runs from Front to Water Street.

He, Mr. Dickson, was describing the Bailey Warehouses, but the Merchants are located right near them, across from the Franklin. When we enjoyed the business of the cotton linters our customers told us that "we cannot do anything with you any more."

"Why?"

[fol. 352] They said, "Well, we have so many more better advantages from the Merchants Warehouse Company than you can afford to give us."

"In what way?"

"Well, for example, we can have a car of linters shipped from the south, consigned to use care of the Merchants Warehouse Company."

They already had the samples.

Now perhaps that may be three or four days in transit.

"In the meantime we can dispose or otherwise have an opportunity of disposing of that car in transit to be shipped outside of Philadelphia. When it arrives in Philadelphia we are eagerly anxious to see as to whether the goods come up to sample. They run it into the Merchants Warehouse

Company. They take it out of this car. We are going to ship it out, as we have sold it. They put it into another car and ship it out and it does not cost us a penny to do that."

They say "Can you compete with them?"

The transfer from one car to the other does not cost the consignee a cent. He says "Can you do that?"

We say, "No."

Then he says "How can you expect to get our business?"

The result is we lose it.

We have had parties say to us, "Well here, if you cannot give us 48 hours free storage we cannot give you our business."

We say "We cannot afford to do that. If we only charge you the same labor charge as the Merchants Warehouse will charge you, how can we afford then to give you free [fol. 353] storage for 48 hours? We would be giving away gold dollars for greenbacks."

They say, "Well, we are sorry. We will have to give it to those who give us the best or the cheapest."

And we cannot afford to unload those cars for nothing. We cannot afford to give them 48 hours for nothing.

When, for example, the merchant would charge 20 cents a bale storage and 15 cents a bale labor, we charge the same, and they being a subsidized warehouse, if they receive from the Pennsylvania Railroad 25 cents a ton—it would take about four bales of linters to a ton—that would be very near 9 cents a bale which they are receiving for labor, inbound, more than what we would be receiving, and if it happens to go out again they will receive 9 cents a bale more. That is 18 cents a bale they would receive more than what we will receive for the same service. Otherwise, I would be getting 15 cents a bale for unloading those linters, putting them in the warehouse, taking them out and putting them in the car again, whereas they would get 15 cents a bale and then 70 cents a ton in and out for handling charge from the Pennsylvania Railroad.

The Merchants Warehouse Company of course gives the 48 hours free time storage. We cannot afford to. We would be driven out of business. In one or two cases we were compelled to do it, or otherwise we would lose our customer entirely if we did not. The 48 hour storage also includes

free handling at the Merchants Warehouse, that is what we have to meet. A man can put it in there and let it stay there and in 48 hours ship it out again, and he does not [fol. 354] pay anything at all. That same competition also applies to virtually all the other commodities that we handle. As to whether that same competition arises in connection with the business of most of our customers or just a small number of our customers, well, I would say that quite a few we run up against and that if we not meet that competition then the business drifts away from us. But it has gotten down now to where the margin is so small that there is hardly a living in it on account of the subsidized warehouses. The warehouses I refer to are the local Merchants and the Pennsylvania Warehousing & Safe Deposit Company.

If called upon I am able to name some customers that we have lost to those two competing warehouse companies that receive allowances because of the free labor service. We were compelled to reduce our normal warehouse charges because of that competition. We were forced to. I know of business that is hopeless for the Northeastern Warehouse Company to solicit or take if they could get it in competition with these warehouse companies that receive the allowances, and we have abandoned hope of handling that business. At one time we enjoyed quite considerable flour. And it is fruitless for us to endeavor to get canned goods. We have given up the effort to get the canned goods and the flour also because the more we handled the worse we would be off.

Taking the flour first. At one time we handled considerable flour for the largest bakeries there were in Philadelphia, and they came to us and told us we would have to reduce our rate, they could get it done for so much cheaper.

I said, "Where?"

[fol. 355] They said, "The Pennsylvania Warehousing & Safe Deposit Company will take it very much lower than you take it. Can you compete with them?

I said, "Not at those figures."

I just forget now exactly what those figures were at the time, but they were so ridiculous we simply had to abandon the flour business and look for some other substitute.

The same thing applied on the canned goods. We only very recently had a letter from a large concern in New

York, and they replied to us that we were away out of proportion. We could not get the business and we had put it down to the lowest possible figure, because our labor charges, we figure on the warehouse business now we have got so low that we lose money on everything we handle as far as labor is concerned, and we have got to make it up on the storage, or otherwise if the storage did not show us a profit we would be away behind. We never get fully paid for what labor we perform.

All of the space which I stated was 170,000 square feet of storage space, has not been utilized to its full capacity by the Northeastern Warehouse Company for the storage and handling of goods during the period from May 1, 1926, to the present date.

We have not been up to our 60 or 70 per cent capacity fully at any time during that period, not over 60 per cent.

The reason why we had so much unused space was that competition became so much greater, warehouses became more numerous, the Merchants Warehouse put a warehouse here and a warehouse there and a warehouse everywhere [fol. 356] else, they built like the chain stores and grocerymen in Philadelphia.

The Merchants Warehouse now has warehouses too numerous to mention. I forget just exactly how many they have.

The allowances or the free handling service offered by the Merchants Warehouse Company and the Pennsylvania Warehousing & Safe Deposit Company undoubtedly had its effect upon our ability to get enough freight to use the entire capacity of our warehouse. The Northeastern Warehouse Company is prepared to handle all kinds of merchandise; hazardous goods that the underwriters will permit us to take, together with all raw materials, manufactured goods and merchandise of every character, with the exception of, as I said before, household goods. It has actually handled a very wide range of package freight. The Northeastern Company, Mr. Examiner, handles a varied amount of package freight at the present time. We have withdrawn from the cotton linters, canned goods and flour business. We can afford to handle other business but cannot handle that because there is so much competition

in that flour business, as I understand. They tell me that the labor is cut down to nothing; so we cannot afford to unload it and put it in the warehouse and pile it up and deliver it for the prices which they claim they get. Therefore we have withdrawn from that business. Yet while we had bakeries within close proximity to us, which we would be much handier for them to store in than it would be to store elsewhere, we could not compete with the subsidized warehouses.

We have asked the defendants to accord our company the same allowances as are accorded the so-called subsidized warehouses.

[fol. 357] I called on Mr. Large, the traffic manager at that time, in 1927, of the Pennsylvania Railroad, and I had occasion to go see him on account of them placing a tariff in effect of cotton storage in transit and with that tariff they had named only the sidings of the Merchants Warehouse but forgot there was any other warehouse in business that had a Pennsylvania siding. They afterwards did accord us the same privilege. Mr. Large said it was a mistake—Mr. Miller had made up the tariff, or otherwise, the sidings, etc., and the tariff was printed.

As to whether, when I replied to the Examiner, I had in mind a milling in transit privilege or the matter of these allowances, I had rather in mind the allowances together with the cotton transit privilege. That came up in the conversation, and I complained to Mr. Large in reference to the subsidized warehouses at the time, and if you want me to explain it to you I will say this: That Mr. Large said, "Well, that has been in existence since the time the flour came in, and we had to turn it over to the warehouses in order to save our terminals" I said, "We are just as much a terminal of the Pennsylvania as the Merchants Warehouse. We discharge the cars and place it in storage. We are just as much of a terminal as they are. Why don't you give us the allowance or take it away from them and put us all on an equal basis?"

At the present time none of the railroads accord us this privilege. At no time in the past did they accord us the same privileges as they have these other so-called subsidized warehouses.

[fol. 358] Cross-examination.

By Mr. Glasgow:

I have been in business 25 years and have been with the Northeastern Warehouse over 18 years. We are about eking out an existence. Our warehouse is located in the northeast section of the city. The nearest other public warehouse to us would be Rex's Warehouse, Morgan and York Streets. That is about nine or ten squares from us. The nearest Merchants Warehouse Company's warehouse to us is one over there at Shackamaxon Street—about half a mile or a mile—about a mile, I guess. It may be a mile or a mile and a half. I never measured it, but I judge that is what it is. Take the Pennsylvania Warehousing & Safe Deposit Company, they have one at Delaware Avenue. They have one down there at Delaware Avenue. That is about four miles. The nearest warehouse of the Philadelphia Cold Storage & Safe Deposit is about two miles or two and a half from us. We are towards the mill district of Philadelphia. We are probably the nearest public warehouse to the cotton mills and the woolen mills up there. We do a pretty considerable business in cotton and wool. That is a very large percentage of our business. There is a large percentage of that cotton that has the transit privilege with it. I don't know as a fact that on cotton that has the transit privilege there is no allowance by the railroads to the Merchants Warehouse Company or these other companies. I do not know anything about that part of it. I do not know what they get. They never told us what they did get, so I do not know.

We have lost some customers to the Merchants Warehouse Company. If I have taken some customers from [fol. 359] them, I do not know it. We tried to and have not been able to take any. They have taken some from us though. We enjoyed a considerable business in flour at one time, about four years ago. About four years ago we had business in flour, but we lost it. When we got it, we got it from merchants in Philadelphia. American Stores Company had the business that we got. The reason why we got that flour at that time was because they had a bakery there on Allegheny Avenue, which is a short distance from us, and the bakery is there today but does not come to us

any more. American Stores owns the bakery. They furnished their own flour before and they stored with us. They now furnish their own flour and they do not use our warehouse. The same allowances were in effect to the Merchants Warehouse Company at that time that there are now. Maybe the American Stores were not wise enough to know it at that time. We knew it, but naturally did not tell them.

I don't know that it is a fact that the American Stores Company does not use any warehouses, I mean public warehouses, and have their own. No, sir, I do not. I know different from that—I mean for the storage of flour. They may at the present time, or otherwise very recently, but I know they did use public warehouses. They used us. It may be true that they use only the public warehouses in case of emergency when their own warehouses are filled. I know that they have a few large warehouses of their own for the storage of flour.

I presume the bakery that I speak of is now furnished by them with flour.

The use of space in our warehouse does not vary from season to season. No, sir. As a general thing it will even [fol. 360] up. Where one article will be out of season another will be in.

When I gave my estimate of 60 per cent or 70 per cent I meant that was that percentage of all the inside storage space we had up there. I did not give any estimate of the ground because that is vacant. There is nothing on that at all. We only have that in case of necessity.

At the present time there are a few mills up in northeast Philadelphia that are operating full capacity and very many that are not. The last year there was quite a depression there in the business. It used to be that when the mills were dull we were busy because if they were not using the stuff they would put it in the warehouse. If they were not selling it they would put it in the warehouse, but that is not so now. The depression in the cotton and wool business affects our business some.

By Mr. Bikle:

As to whether our business is at all affected by the fact that merchants do not carry as big stocks as they used to on account of the greater regularity of the railroad service,

well, that might be to some extent, yes, but of course where there is a greater number in business, as they are increasing, every time when one door opens another closes.

I refer to Rex & Company as being in the business of warehousing somewhere in our neighborhood. Rex & Company are competitors of ours to a certain extent.

Our competitors include the Merchants and the Pennsylvania and of course the other independent warehouses, [fol. 361] they are competitors, all competitors of one another. When I say the other independents, I mean Mr. Rex's warehouse, Mr. Bailey's warehouse, and take our own—we are competitors of each other. There are no others besides those that are complainants, no, they are the worst.

We are able to fight our way with those very nicely that are not so bad, but we cannot fight our way with the subsidized ones.

I do not know of any other independent warehouses in Philadelphia besides these complainants. We get some little business from points inside Pennsylvania as well as from points outside.

On the traffic that comes into our warehouse and is handled through it, it is consigned as a general thing to the owner in our care. On the outbound traffic when we are directed to ship outbound we ship in the name of the owner who gives us the shipping directions.

I explained these various services that we render at our warehouse, and said we did that in accordance with the instructions of either the owner or his representative, and practically all the service we render, either on the inbound or the outbound freight, we do at the direction of and in accordance with the instructions of the owner or his representative.

I do not say whether it was the Merchants or whether it was the Pennsylvania Warehousing & Safe Deposit Company took away our flour business. It was taken away by one or the other. This business was taken away from us by these other warehouses quoting a low rate, about four years ago, this was. We had a large amount of flour about three or four years ago and it was taken away from us by [fol. 362] quotation of lower rate. As I said before, maybe they were not fully acquainted with the fact of what the flour rate was. I do not know what the present flour rate

is because I have not bothered with flour. I know we could not handle it at this time. I cannot call to memory just exactly now what it was three or four years ago.

The rate we were receiving at the time when we had the flour, I was told that our rate was entirely out of proportion, too high. So therefore when they told me "If you want the business at the same rate"—I forget just exactly what it was at that time, "If you want the business at the same rate, why you can have it." I said, "I do not want it. There is no use in giving up good money."

[fol. 363] Room 1103 I. C. C. Building,
Washington, D. C., Tuesday, July 31, 1928.

The hearing in the above matter was resumed, pursuant to recess, at 10 o'clock A. M., before R. M. Brown, Attorney-Examiner.

Appearances: Same as heretofore noted.

Cross-examination of C. P. Foster resumed.

By Mr. Woodcock:

We have no facilities for handling any perishable commodities, such as are ordinarily handled by the cold storage warehouse.

We are handling very few cotton linters at the present time. We handle some little cotton; not as much as we formerly did. The size of our warehouse has been increased since it was originally constructed; an addition was put to it about 20 years ago.

By Mr. Glasgow:

We are capitalized at $500,000, the par value of our stock is $100 a share. It was not all paid in. About three hundred eighty some odd thousand dollars was paid in. The assets of our concern in property now is $800,000; that is about the valuation of it. So that it has increased from [fol. 364] $360,000 to $800,000. We have not put any of our earnings back into the property. We paid the earnings out in dividends. We pay dividends now at the rate of five per cent on three hundred and some odd thousand

dollars—on the stock. There is only a little over $380,000 of stock issued. We have a little surplus; not much, approximately maybe about thirty or forty or fifty thousand dollars. We did not put anything to surplus the last year. We paid everything out.

Redirect examination.

By Mr. Hickey:

The warehouse company has no outstanding bonds or mortgages. It has no promissory notes and loans outstanding.

The Northeastern Warehouse Company complained to the Pennsylvania Railroad in writing concerning the giving of the allowances. We complained to them in letter of January 10, 1928. We received a reply from Mr. Large, general traffic manager of the Pennsylvania Railroad Company, under date of January 14, 1928. Those two letters are before us and read as follows:

Philadelphia, January 10th, 1928.

Mr. J. L. Eysmans, Vice-President Pennsylvania R. R. Co.,
Broad Street Station, Philadelphia, Pa.

DEAR SIR: We noticed in a recent issue of the Traffic World, that the Interstate Commerce Commission in a [fol. 365] report by one of its examiners, ruled that the Pennsylvania Railroad Company must stop discriminating against the McCormick Warehouse Company at Baltimore, by giving allowances to the Terminal Warehouse Company, and refusing such allowances to the McCormick Warehouse Company.

Our Traffic Manager, Mr. Foster as far back as 1921 personally made complaint to Mr. J. B. Large, then Freight Traffic Manager, about this unjust discrimination in Philadelphia.

Please advise if the Pennsylvania Railroad Company will relieves us from the unjust discrimination, either by discontinuing the allowances to the Merchants Warehouse Company, and the Philadelphia Tidewater Terminal Company, or by giving us such allowances.

Very truly yours, Northeastern Warehouse Company. Blair R. Miller, Superintendent.

BRM/LPD.

The Pennsylvania Railroad Company

Philadelphia, January 14, 1928.

Mr. Blair R. Miller, Supt. Northeastern Warehouse Co., Philadelphia, Pa.

DEAR SIR: Referring to your letter of January 10th to Mr. Eysmans, regarding complaint of the McCormick Warehouse Company—ICC Docket 15445:

The facts are that the report you read in the Traffic World is only a tentative report of the examiner in the case, and no action will be taken by our Company until the Commission actually decides the case, after which I will be very glad indeed to sit down and discuss the matter with you.

I remember very well discussion with your Mr. Foster several years ago and fully understand your position. As you know, there is a great deal involved in the whole situation, and, as stated above, there is really nothing we can do pending the decision of the Commission.

[fol. 366] Trusting that this is satisfactory, and thanking you for bringing the matter to our attention, I remain,

Very truly yours, (Signed) J. B. Large, General Traffic Manager.

In this letter Mr. Large states he remembers very well a discussion "with your Mr. Foster several years ago." I have a recollection of that discussion. I went to see Mr. Large in reference to a tariff which they had issued in regard to cotton. The matter was brought up about allowances.

I stated to Mr. Large I thought it was very unjust to give this allowance to the warehouse, that it was nothing more than a gift. Mr. Large replied an stated, "Well, it is the custom" that had been followed since years ago when, practically, there was no demurrage charged, when the railroads were allowed to rebate and also that there was no definite time for the freight to remain at the stations.

[fol. 367] I said "That is very antiquated. Other cities have done away with it. Why should Philadelphia and why should we be discriminated against? Why should we tear down one institution to build up another. You will drive away whatever business we have. I consider it is nothing

more than a gift you are giving to the warehouses, and practically, you might say, a rebate in a different form, in whatever form it was. The consignees enjoy it on account of the very cheap rate that the subsidized warehouses are permitted to give and they will drive out the independent warehouses from the business, and, therefore, they are getting some little benefit in the form of rebate."

Mr. Large said they would very gladly get out of it and do away with this allowance, but under the circumstances with the Baltimore & Ohio allowing it in Baltimore, therefore, of course, they had to allow it in Philadelphia; otherwise they would be glad to get out of it if they could and eliminate it.

(Witness excused.)

Mr. Hickey: Can we put in our stipulation on the billing?

Mr. Bikle: The stipulation into which Mr. Hickey and I have entered is this: The waybills of the Pennsylvania Railroad called for by counsel for the complainant show two forms of consignment. In one covered by six billings there appears in the space designated "consignee—address (final destination and additional routing)" "Merchants Warehouse Co." with address.

In the other, covered by eighty-seven billings, there appears in the same space the name of the person or company that shipped the freight "care of Merchants Warehouse [fol. 368] Co." For example, in the space "consignee—address (final destination and additional routing)" appears "Vacuum Oil Company, care of Merchants Warehouse Co." with address.

Mr. Hickey: That I agree may be stipulated into the record as the joint conclusion of Mr. Bikle and myself.

Mr. Bikle: Now, in addition, I want to make a statement on my own behalf or, rather, on behalf of the Pennsylvania Railroad, that the allowances under the tariff are not payable on shipments consigned to or by the warehouse and we are not undertaking to defend the propriety of any such allowances. As a matter of fact, in the cases referred to, in three instances, the warehouse company paid us back the allowances and in the other three they will be the subject of bills.

I want to say, too, Mr. Examiner, when Mr. Hickey filed his petition for re-hearing in the McCormack Warehouse

Company case, Docket 15,445, I think it is, he alleged that we were paying to the Terminal Warehouse Company at Baltimore on traffic consigned to it or by it as against the provisions of the tariff and that caused us to make an examination which developed that that was true in certain instances. When we discovered it was true there, we also started to make an examination in Philadelphia, or did make an examination in Philadelphia, and that was the occasion for recollecting back the payments that we discovered here; three of these billings were late in the month and did not come within the check. I say that because I want it made clear that we are not undertaking to defend payments where the shipments are consigned by or to the warehouse.

Examiner Brown: The stipulation will be considered as [fol. 369] a part of the evidence.

James A. Mooney was thereupon called as a witness on behalf of the complainants and, after being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hickey:

My name is James A. Mooney. I am general manager of the Industrial Cold Storage & Warehouse Company, one of the complainants in this case. The Industrial Cold Storage & Warehouse Company is engaged in the business of cold storage and warehousing at Philadelphia, Pennsylvania. That company has been in the warehouse business in Philadelphia since 1905. I have been connected with its business and affairs since the same year. Its general office is located at 1905 North American Street. Its warehouse is located at American and Birch in the City of Philadelphia. The warehouse is served by private sidetracks connecting with the Reading Railway. Freight is shipped outbound and inbound to our warehouse over the Reading Railway. About 85% of the tonnage of freight handled at our warehouse is afforded transportation by railroad.

If that 85% was eliminated and we had only the remaining 15 per cent local business not requiring railroad trans-

portation, we would not be able to conduct our warehouse business as a profitable enterprise. The remaining 15 per cent would not pay expenses or taxes. The kind of freight handled at our warehouse is all perishable products, such as butter, eggs, cheese, poultry, fish, dried fruits, condensed milks, powder milks, fresh fruits.

The officers of the company and the solicitors solicit [fol. 370] business personally, through advertising mediums and letter-writing.

On page 37 of a trade publication entitled "National Poultry and Egg Bulletin" issue of May, 1928, there is an advertisement of the Industrial Cold Storage & Warehouse Company. I caused that to be inserted.

Mr. Hickey: I offer that in evidence.

(Said document, so offered, was received in evidence, marked "Complainants' Exhibit No. 10, Witness Mooney".)

The controlling conditions that causes freight transported by railroad to be routed to our warehouse and routed to warehouses of our competitiors are the facilities offered by the Industrial Cold Storage & Warehouse Company. The measure of the charges have a bearing on it.

To be a little more explicit, a car of eggs, we will say for the sake of argument, may be consigned to the Industrial Cold Storage & Warehouse Company and on arrival over there at the Industrial be delivered over the platform. The items of cost that attend the handling of this freight that is routed by railroad to our warehouse are the storage charges principally. Freight rates do not have any bearing on it for the reason that freight rates to the Industrial would be the same as to the other houses, and you would have to eliminate the handling charge to meet this competition. The handling charge is of importance in the matter.

I might explain it in this manner. As stated previously, our storage rates are the same, but in order to get the business, we simply have to absorb that handling rate in our storage charges.

[fol. 371] We solicit the shipment of this butter, egg and poultry business from points outside Philadelphia. The costs of marketing those goods, using our warehouse as a medium of distribution, are the freight rates, plus the unloading, handling and storage charges.

Our competitors are the Philadelphia Warehousing & Cold Storage and the Pennsylvania Safe Deposit Company. We object to the allowances given to those companies by the railroad company for the reason that due to that condition, there are certain lines of business that we have to pass up, due to the fact we cannot allow that handling charge. That competition works along in this manner: A car of perishable products will be consigned care of the Industrial Cold Storage & Warehouse Company and might be intended for storage, and it arrives in Philadelphia. The contents may be sold to a customer of the consignee and hauled over the platform. If we attempt to make a charge for it the business is taken away with the excuse that the other warehouses were giving free cold storage facilities for forty-eight hours and no charge made for handling. We lose the business if we do not meet that competition. We can't meet that competition for the reason that our storage rates are nominal to such an extent that we could not absorb this handling charge. In addition to that, the free refrigerating charge allowed by our competitor.

If we granted the equivalent in free handling service, we would lose the handling costs, which we figure about fifty cents a ton—forty to fifty cents a ton. I might correct that. That means we would have to do business for nothing in competition with our competitors who offer this free [fol. 372] handling service. We have as customers who patronize cold storage warehouses in Philadelphia the producers and shippers in the west who have no representation on their behalf in Philadelphia. The Industrial Cold Storage & Warehouse Company is asked to serve as representative of these western producers. We perform their distribution in Philadelphia. Their goods come in in carloads at carload rates. We distribute the contents thereof. For instance, we will get a shipment of four hundred cases of eggs. That may mean ten—perhaps twenty—deliveries of twenty cases each, in the case of twenty deliveries, to make the four hundred. That is, the four hundred pieces will be one carload lot and the ten to twenty separations mean we would divide and deliver that carload lot of goods to ten or twenty different persons.

We know who to deliver it to as we have instructions from the shipper, or producer rather, to deliver John Jones or William Smith on payment of so much per dozen. Those

instructions come to us by United States mail, mailed to us at the time the car is shipped to our warehouse.

We have a number of customers who are located in Philadelphia or who operate offices there. The commodities they deal in are butter, eggs, cheese, poultry, fish, dried fruits. Some of them are brokers; some are retail dealers, and others commission men. The major portion of the tonnage handled by our warehouse consists of inbound carload shipments of freight transported at carload rates, and that when we receive those cars and unload them, we then distribute the contents thereof in L. C. L. lots to the various customers of our patrons.

We have lost business to these concerns that receive the allowances that we complain of. Our normal warehouse [fol. 373] charges have been reduced by us in attempts to meet the competition of those warehouse companies that receive the allowances. There are certain classes of business customarily handled by cold storage warehouse companies that we have abandoned hope of obtaining and we have surrendered to these warehouse companies that receive the allowance.

The club-car traffic is one of such kinds of business. I will describe that club-car traffic of the cold storage warehouse. That car will arrive with, we will say, in the neighborhood of four to five hundred packages, all consigned to one consignee who will act as the agent. That agent will make distribution out of the contents. He will also collect the freight charges and pro-rate from these several owners who have the goods in the car. Now, during the extreme hot weather months, he may not take delivery immediately, and there are requests to take advantage of the 48 hour free storage under refrigeration.

Cross-examination.

By Mr. Glasgow:

We lose certain business to the other warehouses. We lose business to competitors who have no allowances from the railroads, also at times, namely, the Philadelphia Cold Storage and Warehouse Company, during the summer months and the Pennsylvania Safe Deposit during the winter months. Those are our competitors. We lose busi-

ness to them; I would not say that they sometimes lose business to us.

I would not say that we have such a condition that in competition we get a little advantage of it and gain some business from them. We never get any business from them in the competition. Due to this condition they always get it from us. We have some business for the reason, our [fol. 374] principal accounts, we waive that handling charge, because if we did not, we would have no business at all.

Suppose a shipment comes in, a car comes alongside of our platform; we unload it, and immediately it is taken out by wagon or truck. We do not get anything for it. If we did not unload it for nothing, we would not get any business at all to amount to anything.

We have three or four principal accounts that mean a whole lot, and we are willing to waive that handling charge rather than to lose it. We make enough money out of our storage charge to justify waiving the handling in the aggregate, at the end of a season.

By Mr. Woodcock:

Shipments moving into our warehouse are consigned in two forms. It is either John Smith in care of the Industrial Warehouse & Cold Storage Company or Industrial Cold Storage & Warehouse Company direct. The usual method is John Smith care of Industrial Cold Storage & Warehouse Company. We are not the owners of any of the commodities that move in by railroad. We pay the freight charges and then collect them back from the owner.

Even though some of the shipments may be consigned to the Industrial Cold Storage & Warehouse Company, those shipments would be owned by someone else. And as to the disposition which we would make of those shipments, that would be according to orders which we receive from the owner or from the other party with whom we had our dealings.

Our warehouse is thirteen city blocks from the warehouse of the Philadelphia Warehouse & Cold Storage Company. [fol. 375] It isn't a fact that our business is largely in a different section of the city from the business that they conduct. We bring our business from the producing dis-

trict, which is the same district that the other warehouses get their business from.

When we founded our business in 1905, personally, I did not know that the Philadelphia Warehousing & Cold Storage Company were performing certain services of which we complain, nor that they were receiving these allowances of which we complain.

Our business has grown just a trifle since 1905. I will qualify that a little more explicitly. We added on a couple new rooms to take care of about ten thousand additional cases of eggs. Outside of that we have not expanded any. At the present time in our warehouse we store eggs, poultry, butter, apples, dried fruits and other fruit besides dried fruit. Our rates for the storage of dried fruits are 17 cents per 100 pounds for the first month and 10 cents per 100 pounds for each additional month.

Our warehouse is not located on the Pennsylvania Railroad.

By Mr. Stilwell:

We are not exclusively a cold storage warehouse. I would say eighty per cent of our business is cold storage. The other twenty per cent that are not cold storage are dried fruits, canned goods, soaps—I would say those commodities are stored by all warehouses in Philadelphia generally.

Then we are in competition as to twenty per cent of that business with all the general warehouses in Philadelphia, so that when I stated on direct examination that I had two competitors only, as a matter of fact, I have competition with cold storage warehouses for eighty per cent of our business and of all other warehouses for twenty per cent of our business.

[fol. 376] I say two competitors for the reason that the Philadelphia Warehousing & Cold Storage, being on the same railroad tracks as the industrial, would be a competitor as far as cold storage was concerned and with the Pennsylvania they handling some of the commodities that we do during the winter months when they do not require cold storage, I would consider them a competitor of the company.

I limit our competitors to those who have similar railroad facilities, so far as the Philadelphia is concerned and

so far as the Pennsylvania Company is concerned, eliminating the railroad feature, they handling those particular commodities, we consider them a competitor as far as general warehousing is concerned. I would consider warehouse on other railroads a competitor but for that one reason. If the warehouse had a siding on the Pennsylvania Railroad it is a competitor of ours, due to this feature that I speak of, the handling. If it does not have any handling charge, it is a competitor of ours, in a sense, it is bound to be. It is true all the warehouses are competitors.

ROBERT BEATTY, JR., was thereupon called as a witness on behalf of the complainants and, after having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Hickey:

My name is Robert Beatty, Jr. I am secretary and treasurer of the Industrial Cold Storage & Warehouse Company.

I am also the Philadelphia representative of the Milk [fol. 377] Products Sales Company. That is a concern engaged in the sale of manufactured milk products. It ships those products in carloads at carload rates to Philadelphia. Then they are re-distributed after arrival in Philadelphia almost entirely in L. C. L. lots. We use warehouse service in effecting that distribution.

The warehouse companies we patronize are: For general storage, the Merchants Warehouse Company; for cold storage, the Industrial Cold Storage & Warehouse Company. There are services arising from the handling of our products that we route to the Merchants Warehouse Company which cause us to prefer the service of that company. They are the free handling of our merchandise across their platform for delivery inside of the forty-eight hour period following arrival.

We can ship cars from our factories consigned in care of the Merchants Warehouse Company, to ourselves in care of the Merchants Warehouse Company, and if the goods are sold before arrival, send the orders to my customers

who have bought the goods, and have them go to the warehouse and pick these goods up inside the forty-eight hours free storage time, at no cost to ourselves—at no additional cost above the freight charges. That applies only to that portion of our business delivered within the 48 hours free time. As to why we send the other portions of our tonnage to the Merchants Warehouse Company, we do not want our stuff scattered around in a haphazard manner in a number of different warehouses.

The free handling service given by the Merchants Warehouse Company on that tonnage that is distributed within [fol. 378] the 48 hours of its arrival induces us to send all of our tonnage to the Merchants Warehouse Company whether it be distributed within that 48 hours or put in storage for a longer time.

Assuming the elimination of this free handling service at the Merchants Warehouse Company, we would possibly not send all of our tonnage for distribution through the warehouses of that company.

In the absence of free handling charge there are many other warehouse companies in Philadelphia that we would consider assigning our business to.

There is no possibility of those other warehouse companies receiving our business while this free handling service is granted by the Merchants Warehouse Company—not unless they gave a like service, that is, free of charge. That means free handling for 48 hours.

Cross-examination.

By Mr. Glasgow:

The Industrial Warehouse Company on shipments such as I speak of—milk—absorbs the handling charge when it goes into storage. We do not pay it to the Industrial either. The question of handling charge is of very decided importance, under certain circumstances, to us when the milk is going into storage, because the milk that we send to the Industrial Cold Storage & Warehouse Company requires refrigeration, and there is practically none of it which is immediately distributed over the platform. It goes into the Industrial Warehouse Company and we pay the storage and refrigeration charges, but we do not pay

the handling charge of loading and unloading and putting it into storage—not as such. We only pay a storage charge. That storage compares favorably with the storage [fol. 379] charge paid other warehouses or they could not keep the business. We get a favorable storage charge and refrigeration charge from the Industrial and do not pay any handling charges. I do not get a better or cheaper service through the Industrial than I do through the other.

Q. Well, then, what are you objecting to?
A. What am I objecting to?
Q. Yes.
A. Did I object to anything?
Q. Why, I thought you were protesting here about these charges or something.

Mr. Hickey: No; I do not understand he is. He is just a witness trading with the Merchants Warehouse Company that I have called to state the facts.

I say that I preferred the Merchants Warehouse Company on account of the free handling charge, because we get 48 hours free storage there. I do not handle anything but the perishable milk products at the Industrial. They are two different types. I handle condensed milk and powdered milk. I do not handle our condensed milk through the Merchants. We handle that at the Industrial. I do not pay any handling charge on that condensed milk. I do not get free handling charge in the way of 48 hours free storage at the Industrial because it is not required on that product. That product goes into storage as soon as it arrives. That is the condensed milk we are talking about. If I sent it to the Merchants Warehouse I would get the regular 48 hours free storage. I don't send it there because they don't have refrigeration. It is a question of [fol. 380] refrigeration on that particular item. I do not pay the handling charge on that traffic at any warehouse that I send it to.

I ship powdered milk to the Merchants Warehouse Company and if that milk is sold before arrival, and distribution is made within 48 hours of the time that the car is unloaded, there is no charge of any nature made.

I do not ship the powdered milk to the Industrial Warehouse Company. I do not know how much of that I ship. That is probably 60 per cent of our business.

By Mr. Woodcock:

I have never used the Philadelphia Warehousing and Cold Storage Company for the handling of this milk that requires refrigeration, due to my personal connection with the Industrial Cold Storage Company.

JOHN B. S. REX was thereupon called as a witness on behalf of the complainants and, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My name is John B. S. Rex. I am president of Rex & Company, Incorporated, a complainant in this case. That company is engaged in the storing of merchandise at Philadelphia. It has been engaged in that business since 1892. Its general office and its warehouses are located at American and York Streets, Philadelphia. It operates eight warehouses. They are served by private sidetracks connecting with the Reading Railroad.

We receive the major portion of the tonnage of freight [fol. 381] that is tr-nsported inbound to our warehouses from the Reading Railroad. We receive most of our inbound tonnage over the Reading Company. Most of our outbound tonnage goes over the Reading Company. About 90 per cent of freight handled at our warehouses is transported by railroad.

It would not be possible to conduct our warehouse business if we handled only the ten per cent local business. I complain of allowances given by the Reading Railroad to the Pennsylvania Warehousing & Safe Deposit Company.

We have lost business because of the allowances or use of the allowances against us in the competitive solicitation of traffic.

We have been compelled to reduce our normal warehouse charges to meet that competition. There are certain classes of traffic that we find it hopeless to compete for in competition against that competing warehouse company. The approximate value of our warehouse facilities is about $500,000. The area of the storage and handling floor space at

our warehouses—the actual space taken up in storage is, roughly, somewhere between two hundred and two hundred fifty thousand square feet. We handle at our warehouses all kinds of general merchandise.

Cross-examination.

By Mr. Glasgow:

The larger part of our business probably is chiefly wool—very little cotton. A large part of our business comes in in import business. I should say 60 per cent, maybe more of it is import. That usually is handled on the rate governing import freight from dock to warehouse; not on a switching charge.

It may be a fact on rare occasions, but not frequently [fol. 382] that the import traffic or part of it is handled by trucks from the docks to our warehouse. It is handled on trucks that may come into a pier that is not a Reading siding. If it comes in where it is a Reading siding, it is put into the cars and sent up to us by the Reading Railroad. I think the rate is five cents a hundred on import freight from the wharf with a 2½ cents loading charge.

We pay that railroad five cents a hundred for bringing it up to our warehouse. I believe that is the rate, then when it goes out the freight rate is paid; we do not necessarily pay it. The customer pays it, I believe. There is a handling charge at our warehouse on the freight that comes up from the dock; that is, wool or whatever it may be. That charge varies according to the commodity. The customer pays it. I do not believe he does pay it at every other warehouse. I do not think he does. He tells me he does not.

I understand that there is free handling charge at the Pennsylvania Warehouse & Safe Deposit Company on wool that comes in import and is carried from the dock up to their warehouse. If that traffic comes in import and it is carried under the same rate of five cents to the Pennsylvania Warehouse & Safe Deposit Company, I do not think they charge for the handling of it.

I have never brought anything in or had anything billed to me personally. I am given to understand by my customers that the crux of the situation is if they put it with one of the warehouses they have no labor charge to pay, no handling charge. If they put it with me I have to charge

for my labor because I am not paid by the railroad for handling it, and the result is I have often the question [fol. 383] whether I will handle it for nothing or lose the business.

Q. Do you not know it is a fact, Mr. Rex, because you must have known that to be able to make the statement you did just now, that nobody gets an allowance in the Philadelphia warehouses for the handling of wool?

A. No, I did not know that.

Q. You did not know that?

A. No, sir.

Q. And if nobody got any allowance for the handling of wool, your objection that you filed here today would very largely disappear, would it not?

A. Well, there are wheels within wheels, where a railroad is paying a terminal charge to a warehouse that enables them to offer terms that an independent warehouse cannot compete with.

Q. You state here a large part of your business is wool?

A. Yes, sir; I did not say it all came in at the Port of Philadelphia either.

Q. Suppose it don't. If the large part of your business is wool and if there is no allowance paid by the railway company to any warehouse for the handling of wool would not a large part of your objection that you have stated here disappear?

A. No, sir.

Q. Why?

A. Because we cannot compete under the terms offered unless we get the same advantages of a tonnage charge that the other warehouse does we cannot compete.

[fol. 384] Q. Suppose none of them get it.

A. We cannot compete in loading it out.

Q. Suppose none of you get any payment for it?

A. If everybody gets the same? There would be no reason for us being here.

Q. That is what I say. So far as wool is concerned, if nobody got any allowance, then there would be no reason for you to be here on account of that, would there?

A. You see you are talking about it as if all the wool came from Philadelphia at 7½ cents a hundred, athough you said five. It may come from Arizona or New Mexico. A lot of it may come in through the Port of Boston or New York.

It may be rejected or reshipped from different points and when those wools come in on a full haul, there is an allowance made.

By Mr. Webber:

We do no cold storage business.

By Mr. Woodcock:

I said that 60 per cent of our business is wool. I could not tell you how much of that wool has come in through the Port of Philadelphia to be hauled to us from the piers of the railroads to our warehouses. I have never made a record of it. Sometimes it would be quite a good deal; sometimes it would be very little; different seasons different importers have different ways of shipping. If you take the total for the whole year I do not think the greater part of it comes into us through the Port of Philadelphia.

[fol. 385] Shipments moving into our warehoue are sometimes consigned to Rex & Company, Incorporated, generally consigned to the owner, care of Rex & Company siding. Where they are consigned to Rex & Company, Incorporated, they do not belong to us in any way; that is very rarely done, however. We have no interest in the goods other than the owners' interest whom we represent. The capacity of our warehouse has been increased since 1892, since the business was started. About four times—about four times as great.

The last building that we erected was the first year of the war or the year before the war.

By Mr. Glasgow:

Practically none of our wool business is delivered by truck to factories or mills in the immediate vicinity. Practically all of it at the present time is shipped out by rail.

Edward T. Davis, Jr., was thereupon called as a witness on behalf of the complainants and, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I am Secretary and Treasurer of the Quaker City Cold Storage Company. That company is engaged in the cold

storage business with warehouses at Delaware and Spruce and Delaware and Snyder Avenues, Philadelphia. Its general offices are at 211 Callow-Hill.

The Pennsylvania Railroad siding serves our Delaware Avenue and Spruce Street warehouse—B. & O. Railroad serves Delaware Avenue and Snyder. That Delaware Avenue and Snyder location is a joint terminal—Reading and B. & O. Railroads.

The Quaker City Cold Storage Company receives allow- [fol. 386] ances from the Pennsylvania Railroad Company for unloading of cars. The rate of those allowances and the commodities are 50 cents a ton of 2,000 pounds on butter, eggs, cheese and poultry. The aggregate of the allowances received in any recent year is $1500.

Other commodities we receive in cars over the Pennsylvania Railroad and unload at this Delaware Avenue and Spruce Street plant are meat, fish, fruit, produce and canned goods. Those canned goods are cold packed fruit preserves.

We receive allowances from the Pennsylvania Railroad and those are for handling those four commodities at our Delaware Avenue and Spruce Street building.

We receive no allowances from the B. & O. and the Reading Company for handling those articles or any other articles at our Delaware Avenue and Snyder property.

That is Mr. Lang's signature on that letter from Mr. Lang, assistant treasurer of the Quaker City Cold Storage Company, addressed to the Milk Products Sales Company under date of June 13, 1928.

(Said document, so offered, was thereupon received in evidence, marked "Complainant's Exhibit No. 11, Witness Davis.")

Practically all of our business handled at our Delaware Avenue and Spruce Street property, which is served by the Pennsylvania Railroad, is inbound tonnage received over the Pennsylvania Railroad.

We have very little outbound business.

Taking a typical car of inbound freight from the time we receive an arrival notice from the Pennsylvania Railroad at Spruce Street, this is what we do with that freight: [fol. 387] The car is rolled into the plant and we are notified by the railroad company and we instruct them to place it

on our siding. We unload that car and receive the bill of lading of what is in the car and check it out. There are two kinds of cars. One is l. c. l. and the other is the straight car shipments. The straight car shipment will be called for or delivered. If it is called for within the 48 hours, why, we do not store it or make any storage charge for it. If it remains over the 48 hours, it goes under storage under lot number and we bill the consignee another charge.

If the goods are delivered within that 48 hours we take this allowance from the Pennsylvania Railroad Company as our compensation for the handling charge.

I would say generally and in practically every case those shipments are billed to the consignee in care of the Quaker City Cold Storage Company.

We distribute the inbound carload shipments; that is, distribute them in l. c. l. lots. We deliver them that way. In order to effect that distribution we receive from the owners of freight, by United States mail or other means orders, which instruct us as to the distribution the owner desires made. Those orders are, in some cases, in our possession at the time we break the seals of this car and start to unload it; I am not sure in all cases. In cases where they are not in our possession, we hold the contents of the car and we neither store it nor distribute it until the orders are received later.

The distribution service which I described applies to [fol. 388] butter, eggs, cheese and poultry. I believe it accurately reflects our handling of butter, eggs, cheese and poultry. It does not accurately reflect our handling of inbound shipments of meat, fish, fruit and canned goods. In some cases it is the same; in other cases it is different. For instance, in cars of fish, we do not hold any fish for 48 hour delivery, because they expect us to store it, and we always store that right away. Fish goes into cold storage immediately.

We receive allowances on inbound shipments of butter, eggs, cheese and poultry; we do not receive allowances on meats, fish, fruit, produce, canned goods and preserves. As to the reason why the Pennsylvania Railroad Company should pay allowances on those first four commodities and not pay allowances on the others—I cannot answer that except that they only granted us the allowance on the butter, eggs, cheese and poultry.

We handle butter, eggs, cheese and poultry at our Snyder Avenue warehouse served by the B. & O. and the Reading. The butter, eggs, cheese and poultry handled through that property at Delaware Avenue and Snyder is handled under practically the same circumstances and conditions that those four articles are handled through our Delaware Avenue and Spruce Street plant. We do not get any allowance from the B. & O. and the Reading; we have no terminal agreement with them. I do not know why we don't. It is a new plant just been operating for a few months.

Cross-examination.

By Mr. Glasgow:

At this B. & O. and Reading terminal, the railroad company unloads the cars. They handle the freight on the plat- [fol. 389] form. We handle it at this other warehouse but at the B. & O. and the Reading the railroad company handles it themselves.

By Mr. Bikle:

With respect to the arrangement we have with the Pennsylvania Railroad, I referred to the fact we were paid for the unloading of the freight. We have entered into a contract; that is the foundation. That payment includes other services than the unloading of the freight.

We have other duties to perform in regard to the collecting of the freight and so forth. We collect the freight from the consignee. Our company itself pays the freight charges on some of these shipments that come into our warehouse. We pay it for the account of the other people. We advance it and then bill it to them. There are no shipments that are handled through our warehouse where we pay the freight money out of our own treasury except to collect again; just simply advancing.

In respect to the handling of these shipments, we do exactly what we are told by the owners or their representatives. Goods delivered within 48 hours is a smaller but considerable part of the business.

When goods consigned, say, to A in a car are delivered to such persons as A directs within the 48 hours, in that case we receive no compensation of any kind for storage and

the compensation we do receive is such compensation as we receive from the railroad under our contract.

There is a substantial amount of freight, though, of a smaller quantity than the other that is so handled. There is freight that passes through our place of business from [fol. 390] the railroad to the person to whom the consignee tells us to give it that never gets warehouse service in the sense of storage. Some of the freight that is handled through our warehouse comes from points inside Pennsylvania.

Redirect examination.

By Mr. Hickey:

A small proportion of our inbound shipments originate at points in the State of Pennsylvania.

Most of the shipments handled at our warehouse originate, I would say, in the middle west—points outside the State of Pennsylvania.

Mr. Hickey: Yesterday, when Mr. Henry was on the stand, I endeavored to put in description of the Merchants' Warehouse Company appearing in a trade publication entitled "Distribution and Warehousing" and I did not have the correct copy of that. I now show that to Mr. Glasgow.

Mr. Glasgow: All right. Go ahead and put it in.

Mr. Hickey: I offer for identification an exhibit showing excerpt from "Distribution and Warehousing," issue of January, 1928.

Mr. Glasgow: Page what?

Mr. Hickey: At the present time I take it Mr. Glasgow and I have an understanding that page 430, Merchants' Warehouse Company, is propertly identified by that publication. The balance of that exhibit I will identify by witnesses called later.

Is there any objection to my offering the whole exhibit in evidence at the present time?

Mr. Glasgow: Let me see it. I do not think there is the slightest.

[fol. 391] Mr. Hickey: It is excerpts from that publication.

Mr. Glasgow: None in the world so far as I can see.

Mr. Hickey: Then I offer the exhibit in evidence.

Examiner Brown: The reporter will strike from the exhibit the heading "subsidized warehouses." Without objection this will be received as Complainant's Exhibit No. 12.

(Said document so offered, was received in evidence, marked Complainant's Exhibit No. 12, by Counsel.")

Mr. Hickey: Now, I would like to offer another exhibit in respect of the complainants' warehouses which appear in that same publication.

Examiner Brown: Any objection to the reception of Exhibit No. 13? I will be received as Complainant's Exhibit No. 13, by Counsel."

JAMES GALLAGHER was thereupon called as a witness on behalf of the complainants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I conduct the Gallagher warehouse in Philadelphia under the name and style Gallagher warehouse. It is not incor- [fol. 392] porated. I have conducted a warehouse business in Philadelphia thirty years. My general office is located at 509 Third Street, Philadelphia. It is general merchandise warehoues business. About 70 per cent of the tonnage handled by our warehouses is transported by railroad inbound or outbound.

It would be impossible for us to pay operating expenses if we handled only the local tonnage not requiring railroad transportation.

The warehouses which we operate are at 708 to 714 South Delaware Avenue, Philadelphia; 736 to 748 South Swanson Street, Philadelphia; 810 to 820 South Swanson Street, Philadelphia. The value of our warehouse facilities is about $700,000. We handle general merchandise. We are obliged to give 48 hours free delivery in order to compete

with the subsidized warehouses; otherwise we would not be in business.

We handle all kinds of freight except inflammable and explosive articles. We do not handle bulk freight, it is package freight. The railroad companies that transport freight inbound to and outbound from our warehouses are Reading and the Pennsylvania Railroad; the Pennsylvania Railroad to two of those warehouses only.

I have complained of allowances for the last 20 years. I complain of the subsidized warehouse allowance and the tonnage proposition based upon 50 cents a ton, which we have complained of to the officials of the railroad companies at times. The railroads that give allowances and the warehouse companies that receive those allowances are the Pennsylvania Railroad, Reading Railroad, Baltimore & Ohio Railroad; Merchants' Warehouse, against the allowance from the Pennsylvania Railroad, and the Pennsyl- [fol. 393] vania Warehouse & Safe Deposit Company that of the B. & O. and the Reading Railroad.

There are many ways by which those allowances hurt us in the conduct of our business. Of course, we are obliged to reduce the rates about one-third of what we formerly got and it has come down to a minimum such today that warehouses practically pay—my warehouses pay about 2-1/2%.

We have various people at various cities around who solicit freight which we advertise and they come in competition and we have lost considerable business, they said, because we do not give the allowance and we were obliged then to make allowance to certain people who ship to us. We were obliged to reduce our charges and give them 48 hours free delivery in all carload freight coming into the warehouse. The Merchant's Warehouse and the Pennsylvania Warehouse give it. Those two warehouse companies are our competitors.

In the competitive solicitation of business, that 48 hours free time is hurtful to us, because we have to unload the freight and put it into the warehouse and keep it there and make distribution of those goods possibly in small lots to people who come there for them and take receipts.

On our inbound freight distributed within 48 hours if we met that competition we don't derive any revenues from

the handling of that freight, and if we meet the competition of the free handling service by our competitors, the Merchants' Warehouse Company and the Pennsylvania Warehousing & Safe Deposit Company, we have to perform [fol. 394] services free of charge.

Cross-examination.

By Mr. Bikle:

In cases where freight is shipped to us we pick it up and put in in the warehouse. We do not know anything about it other than it is shipped to the railroad company. The railroad company notifies us and we pick up the freight of that calibre and take it in the freight warehouse and then distribute it from the warehouse. In other words, we have such accounts that we handle it exclusively for out-of-town people. We make out the bills and do the collecting and everything else for them and then submit to them. We also have a list of names, who to let have that merchandise. The actual way in which about 30 per cent of the goods are consigned when they come to our warehouse is they are consigned to Gallagher's warehouse. The other is consigned to somebody in our care. We advance the freight moneys for the accounts of the owners.

We receive freight from points inside of Pennsylvania.

By Mr. Webber:

I imagine about 30 per cent of that freight that comes into our warehouse is distributed within 48 hours.

Q. I do not know that I understood you exactly as to what extent you were hurt, as you said you were. As I understood you, you said that you only got about one-third of what you formerly got for storage. Do you mean in amount of money?

A. No. One-third in the amount we formerly got. The rates have been cut. They are practically handling freight today for 2 1/2 and 1 1/2 that we did, and Mr. Earl, who is here now, said he hoped those rates would never go lower. [fol. 395] Q. How long had this cutting of rates continued by you?

A. By me?

Q. Yes.

A. I did not particular- cut before. I had to cut to meet the other fellow.

Q. You did cut them?

A. Absolutely.

Q. When?

A. In the last four or five years.

Q. How much did you cut the last year, for example, on the average?

A. It got right down to a minimum right away. It seemed to me when they started to cut they cut it all together. They cut it down until we got down to about five cents a hundred, three cents a hundred, and came down to about two and one-half cents and one and one-half cents a hundred. Of course, we were practically forced into the warehouse business. If we had not this trucking business of ours, we could not exist in the warehouse business today. The warehouse would not permit us to go ahead if we had not this big trucking business in Philadelphia.

Redirect examination.

By Mr. Hickey:

Our business is mostly to and from points outside of the State of Pennsylvania.

R. P. PURCHASE was called as a witness on behalf of complainants and, after having been first duly sworn, testified as follows:

[fol. 396] Direct examination.

By Mr. Hickey:

My name is Roy P. Purchase. I am engaged in the flour business in the Bourse Building, Philadelphia. I represent the Commander Larrabee interests. They are flour millers in Minnesota, Kansas and Missouri, operating mills with a total capacity of approximately 30,000 barrels a day. Commander Larrabee mills market their flour, principally east of the Rocky Mountains.

As to the quantity of that flour sold and distributed in Philadelphia, proportionately with the requirements of the market, we obtain our share of the business.

I have salesmen traveling around the City of Philadelphia and also traveling out in the state who sell flour principally in carload lots for shipping into the territory there.

I am a member of the Bourse, Member of the Philadelphia Commercial Exchange and the Philadelphia Flour Club. The Philadelphia Flour Club is affiliated with and part of the National Federated Flour Clubs.

Of the several warehouse companies in Philadelphia, the Commander Larrabee interests market their flour principally through two, the Merchants Warehouse Company and the Pennsylvania Warehousing & Safe Deposit Company. The handling of our flour is confined to those two warehouse companies, principally due to concessions or rates that are afforded through those warehouses as compared with other warehouses.

I will describe those concessions in detail: Flour arriving for delivery through the Merchants or Pennsylvania Ware- [fol. 397] housing & Safe Deposit Company warehouses in the first place avoids any possibility of demurrage as a result of the cars being unloaded immediately upon arrival as compared with it being held on track for the other warehouses if bills of lading are not surrendered. Beyond this 48 hours' free time granted through the two mentioned warehouses the Mechants and the Pennsylvania, it is my understanding that there is subsidized——

Mr. Glasgow (interposing): Wait a moment. I think the witness better confine himself to facts.

Examiner Brown: Testify as to facts, please, sir.

The Witness: The two mentioned warehouses make lower rates for handling of flour than the balance of the warehouses in Philadelphia have been able to quote us.

As to whether there is an alleged agency practice here, that is, that the Merchants Warehouse Company is alleged to be the agent of the Pennsylvania Railroad Company and that the Pennsylvania Warehousing & Safe Deposit Company is alleged to be the agent of the Reading Company, that operates in a manner detrimental to milling interests, including the Commander Larrabee interests, it is my understanding that these warehouses are the agents of the

railroad. As to what practice is involved in that alleged agency that is objectionable to the Commander Larrabee interests, the principal objection of our mills is the fact that through the association of one man acting as railroad agent, warehouse manager and banker, it reacts to the disadvantage of our mills principally due to the fact that our [fol. 398] items that are sent through on arrival draft and our goods which are sold on arrival draft basis are not paid for in some cases for five or six months, which means an investment on the part of the milling companies that should not be necessary and would not be necessary if delivery was handled the same as it is through the ordinary warehouse throughout the country and delivery taken within 48 hours.

(Upon motion of Mr. Bikle and Mr. Glasgow to strike out the last answer as not responsive and as irrelevant to any issue in the case, the Examiner ruled the answer will stand subject to those objections.)

By Mr. Hickey:

Q. Mr. Purchase, state more in detail why this commingling of transportation service and trade service is objectionable?

(Objection and argument of counsel fol-owed by ruling of the Examiner: "The witness may answer the question which Mr. Hickey has asked, the answer to be subject to the objections of Mr. Bikle and Mr. Glasgow. I will not attempt to rule out any evidence of this kind because it may have a bearing on the case. You can rest assured that the Commission's report and order in this case will not go beyond the issues covered by the complaints. Any testimony from this witness along that particular line will be received subject to the objection and subject to the remarks of counsel for both complainants and defendants.")

The Witness: This practice is objected to due to the fact that millers who ship their carloads of flour to Philadelphia [fol. 399] on shipper's order bills of lading, and who deposit these items in the bank to be collected upon arrival of car find that these cars are unloaded in the Merchants and Pennsylvania warehouses without surrender of bill of lading and in numerous cases will stay there for several

months before the draft is paid, and in some cases it results in the drafts never being paid, and the market declines.

The Pennsylvania Warehousing & Safe Deposit Company operate a bank in connection with the warehouse and advances money for a proportion of the draft, I would say approximately 80 per cent, when the buyer gets ready to come in and pay for an individual car. The car may have been there 30 or 60 or 90 days, and the customer when he gets ready to take delivery of one car, maybe several he might have, goes to the warehouse company and he can arrange a loan from the warehouse company for approximately 80 per cent of the value of the car by depositing himself about 20 per cent and giving a note and conveying title to the property to the warehouse company.

I believe the Merchants Warehouse Company has banking affiliations indirectly, or an arrangement with some banking concern for a similar handling.

It is my understanding that if those warehouse companies were treated as separate and distinct entities, then when the railroad company tendered an order notify shipment of flour for delivery at those warehouses, the order notify bill of lading would have to be taken up as a condi- [fol. 400] tion precedent to delivery and that would require payment of the draft attached thereto at the bank, and that is the only point in which we are interested. Under the present conditions there is considerable delay in taking up those bills of lading; sometimes it runs into several months.

The warehouse company is in the storage business and derives revenue from long term storage of flour. Ordinarily the trade buys in carload lots. Some of the smaller fellows buy a great many cars at one time in certain markets and order it forwarded to the warehouse companies and immediately upon arrival of the goods at the warehouse they are unloaded and following unloading there is a postal card notice sent out to the notify party who, at his convenience, whether one week or one day or six months, goes to the warehouse company when he wishes to get that one particular car and ordinarily arranges to handle it through the finances of the warehouse company, putting up approxi-

mately 15 or 20 per cent of his own funds. That puts it in a position where he can—where the draft is then paid to the mill either direct by the warehouse company bank or through whatever bank they might have arrived, and when the customer wishes to withdraw any of the goods from that car he then must pay the balance of the original purchase price per barrel. As to whether the practice of handling flour through those two warehouse companies is similar to the practice of handling flour through the warehouses at Buffalo, or Detroit or Cleveland or Cincinnati, I do not know of any place in the United States where they handle flour the way they do in Philadelphia.

[fol. 401] Bankers with whom I handled this type of business at Minneapolis when I was in business there myself looked with great disfavor upon what are termed cash items on shipments destined to Philadelphia. I might say cash items are shipper's order bills of lading which are accepted by the banks and for which immediate cash credit is given, so that it can be checked against immediately. This particularly was mentioned to me several times in taking large quantities of drafts where they would sort out the Philadelphia items for more definite observation as to the contents.

Cross-examination.

By Mr. Glasgow:

If it be supposed we did not have this arrangement in Philadelphia by which a car of flour as soon as it arrives at our mills was unloaded at a warehouse and if it be further supposed the car arrived on one of these bills of lading with draft attached and the fellow did not pay it, we would immediately get notice at Minneapolis or from the point of shipment and we would immediately proceed to get after him and get it collected or we would suffer a loss as a result of it being declined and it would teach us a lesson and we would stop selling him. The car would go on demurrage. We would have to pay, too, if that fellow did not care to take it. If we ship to people here who are prompt in paying their bills when the drafts are presented, then we do not have any of the difficulties mentioned; that is [fol. 402] what we do principally now. There are but few

of those who pay their drafts promptly upon the arrival of the goods, due to the fact that even the good ones have degenerated to this basis. There is very little available trade among the larger consumption in Philadelphia upon which the terms as mentioned by Mr. Glasgow would be enforceable. I mean that the people who buy flour in Philadelphia have degenerated to the point that they will not pay their bills when the cars of flour arrive, which is when they are due. As to whether our complaint is a general one against the people we sell flour to, our complaint is against a policy or practice that has been developed by the warehouses and railroads. As to whether our complaint is that the railroads take it or put it in storage instead of collecting the bill, our complaint is that they unload it without getting the bill of lading. As to whether the railroads' complaint against us is that we ship it to people that do not pay their bills when they are due, our complaint is that they do not do in Philadelphia as they do in the rest of the United States in connection with handling particular shipments. I might qualify that by saying that some of our best customers who formerly were paying our arrival drafts discovered they could come in under this, and have got back to the basis of paying us the same as the rest of them, because they found there was a weak spot in the warehouse proposition. Our complaint, then, is a complaint as to the degeneracy of the flour trade in Philadelphia, if you wish to put it that way.

[fol. 403] By Mr. Bikle:

I think this agency relation ought to be discontinued and the railroad discontinue these payments to the warehouses.

As to the situation that would develop if this arrangement were not in effect, and as to whether it is correct to say that we would ship the car to Philadelphia and if the bills of lading were not delivered the car would stand on the track under demurrage and the consignee or notify party would suffer, he would suffer if it was finally delivered; we would suffer if he did not take delivery at any time. That would be a more satisfactory and a more attractive situation than the one which I have described. I am basing that opinion on shipments I have made throughout the United States while located in the west and the

very satisfactory results obtained from it. I would not say it is true that it is entirely within our province to ship flour to Philadelphia in that fashion if we so desire. The only alternative I feel we would have would be to discontinue selling flour in Philadelphia if we enforce those rules. I suppose we possibly could ship flour there for track delivery, just like any other terminal. As to whether it is simply that the trade would not like it as well, it is simply that the trade have facilities and they specify on their contracts where we must ship it, and that is destined to points where they can obtain the greater benefit in concessions. We could not obtain any orders if we made delivery of our shipments only on track.

[fol. 404] By Mr. Glasgow:

The larger part of the flour business in Philadelphia, I would estimate possibly 85 or 90 per cent of it, goes through the Merchants Warehouse Company and this other warehouse company, the Pennsylvania Warehousing & Storage Company. As to whether it is my idea that the trade of Philadelphia should be cut off from the concessions that the railroad makes in the handling of the delivery of this freight, that that should be cut off in Philadelphia and that the dealers there and the purchasers there should be required to pay the 40 cents or 50 cents a ton that is required to make delivery, I have never endeavored to pass on that. As I stated to start with the only object we have in the matter is the obtaining of the delivery on the bill of lading at an early date. As far as going on the record as to what compensation the railroad should or should not have, it has not been vitally important. It would help solve our difficulty if this provision by which the railway company paid for the unloading or loading of flour, and the handling of the flour, should be cut off. The result would be that the consignee of the car or the man who shipped it would have to pay the handling charge himself. It is my idea then, that on 80 or 90 per cent of the flour in Philadelphia the people who are dealers or the people who are the shippers ought to pay say 40 or 50 cents a ton for handling.

[fol. 405] By Mr. Stilwell:

As to whether it is correct that when this flour comes in and our customer allows it to go in storage after getting his

notification order without paying the draft and lifting the flour it is stored in the warehouse—it automatically is in the warehouse before the customer knows it is in town. The man that owns the bill of lading owns that flour; the mill company owns the bill of lading. While that flour is in the warehouse waiting for these delinquent customers of ours we own the flour.

As to why we do not get after our customer and make him pay, there is no one mill that can take an arbitrary stand where there are practices built up by the carriers that are afforded to certain individuals and we can not do any different than any other one mill might do. We have been and we are now shipping flour to points where there are warehouses, Harrisburg, Baltimore, Scranton, Wilkes-Barre, and none of that flour is unloaded before the bill of lading is surrendered, and the comparison of payment is so much different that we realize we can not bring the trade around to the point where they will pay our items on arrival of cars when our competitors are selling in a manner more lenient. We are willing to take a chance of paying the demurrage up in the state. We do not instruct our flour dealers not to put the flour in the warehouse because the practice there would bar us from participating in the volume of business going on in Philadelphia. In other words, if we attempted to get from the customers more prompt [fol. 406] payment, our competitors in the flour business would get the business.

The only difference between the practice of the Pennsylvania Warehousing & Safe Deposit Company in loaning upon merchandise in its warehouse from that of the National Bank or any other banking institution is that the former have actual commodity in their immediate possession rather than to have to take a chance on any documents not being correct that might be passed between the banks—that is practically the only difference.

By Mr. Glasgow:

I am in Philadelphia and I am the representative there of the Commander Larrabee Mills and of course I know when shipments are made at Philadelphia to parties to whom I have sold the flour. I am advised when that flour is shipped; we get a duplicate invoice.

We handled, I think Mr. Richardson stated a year ago, over 4,000 cars in there and we do not trace every one of those cars in detail.

By Mr. Stilwell:

Q. Suppose one of these shipments went into another warehouse, the Terminal Warehouse, for instance, and there was an order notify shipper bill of lading, would not the same situation arise in connection with that shipment as one to the Merchants or the Pennsylvania Warehousing & Safe Deposit Company?

A. In what respect?

Q. One of your customers directs that you ship care of the Terminal Warehouse?

A. Yes, sir.

Q. And the shipment arrives in Philadelphia, the cus-[fol. 407] tomer is notified but does not pay the draft and lift the bill of lading, what happens to the shipment?

A. It goes on demurrage.

Q. You mean it stays in the car?

A. Yes. That is my understanding.

[fol. 408] Edward Knighton was called as a witness on behalf of the complainants and, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My name is Edward Knighton. I am engaged in the flour business in the Bourse Building, Philadelphia. The trade organizations and commercial organizations in Philadelphia with which I am connected are the Flour Club, the Commercial Exchange, the Bourse.

My company is the Philadelphia, Pennsylvania, and Maryland representative of eight or nine western mills. We sell flour both to Philadelphia customers and others in the territory we cover on arrival draft terms only.

[fol. 409] I heard the testimony of Mr. Purchase. As to whether I have a similar objection to the alleged agency between the Pennsylvania Railroad Company and the Mer-

chants Warehouse Company and Reading Company and the Pennsylvania Warehousing & Safe Deposit Company that Mr. Purchase voiced in his testimony, my objection is that there is no penalty attached to a man not paying the draft because it automatically goes into storage where he intended it to go in the first place. My position does not differ on the whole from that of Mr. Purchase, only possibly in some of his answers. As regards there being no way of making these people pay their drafts promptly, I agree with the answers Mr. Purchase made on cross-examination, and his statement that that is due to the system of storing flour without delivery of the bill of lading.

Cross-examination.

By Mr. Glasgow:

If there was coupled to the present arrangement a provision for penalty in case our customers did not pay their drafts promptly, I would have no objection to it. I think it would be a rather good arrangement if they had that penalty clause provided.

[fol. 410] SIDNEY ANDERSON was called as a witness on behalf of the complainants and, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

No name is Sidney Anderson. I am president of Millers National Federation. We have headquarters in Chicago and an office in Washington. That organization has something over 300 members operating somewhat over 300 mills. Its members produce about 73,000,000 barrels of flour a year; about 65 per cent of the total. That flour is marketed all over the United States—some of it in Philadelphia.

[fol. 411] I heard some but not all of the testimony of Mr. Purchase. I have an objection to this alleged agency between the Pennsylvania Railroad Company and the Merchants Warehouse Company at Philadelphia and between the Reading Company and the Pennsylvania Warehousing

& Safe Deposit Company at Philadelphia. The objection, as I see it, on the part of the millers of the United States to this particular arrangement is that it deprives them of the benefit of the law, the rules and the charges made by the railway companies for their own protection and with the object of securing a prompt unloading of freight. Second, that it, in effect, makes the goods shipped in the manner described by Mr. Knighton and Mr. Purchase subject to delivery to an agency of the railway company with which we have no privity of contract under the bill of lading or otherwise.

Cross-examination.

By Mr. Bikle:

I think that the proper course would be to discontinue the agency relation between the railroad and the warehouse company and discontinue the payment of this compensation for the unloading and other services.

By Mr. Glasgow:

I do not put that either on our mills or on the customer who receives it; I do not mean to put it anywhere. I think the rules and regulations and laws under which it is shipped put it there and that this arrangement places it elsewhere. [fol. 412] I mean you have certain rules respecting the application of the demurrage, for example. You have certain charges for storage in a railway warehouse. A shipment which goes anywhere else in the United States except to Philadelphia is shipped subject to those rules and regulations and charges, but a shipment going to Philadelphia is not subject to the same rules and requirements which make for prompt unloading of the car. It is perhaps true this arrangement in Philadelphia promoted the prompt unloading of the car as soon as it arrived, but it does not result in the lifting of the draft which is a part of the general transaction. Our objection is not to the want of promptness in paying our drafts. We make a contract with the buyer which is predicated upon the rules of the railroad companies in respect to the unloading of that car. I mean the rules with reference to demurrage and storage, etc. Their rules for demurrage are in effect in Philadelphia but not so far as these particular warehouses are concerned.

I don't know whether the car goes on demurrage if it is not unloaded in Philadelphia for any reason for which the railroad is not responsible.

Q. How can you answer when you refer to these rules of [fol. 413] demurrage without knowing.

A. I say these rules as they are applicable everywhere in the United States except in Philadelphia have the effect of——

Q. Now, what——

A. I am talking about demurrage. If you want me to answer your question I will. If you do not I will not.

By Mr. Glasgow:

Q. Mr. Anderson, I would like for you to tell me what rules it is that you object to of the railway companies that are not carried out in Philadelphia?

A. I am trying to tell you what the situation is. I can not testify with reference to the rules because I know nothing about the rules. I make no claim to know anything about them.

Q. Didn't you say your objection was that the rules, laws and regulations that were applicable all over the United States were not carried out in Philadelphia?

A. I said the effect of this arrangement between the railway company and these warehouse companies was to deprive us of the advantage of the rules which are made by the railroad companies to secure the prompt unloading of cars and it, incidentally, results in delay in the payment of the draft or papers which accompany the bill of lading.

Q. What rules do you refer to of the railroad company?

A. I refer to the rules with reference to demurrage, the charges for storage.

Q. Don't they enforce the rules for demurrage and the charges for storage after the free time in Philadelphia just as they do anywhere else?

A. They may for all I know. I can not testify as to that. [fol. 414] It is the effect of that.

Redirect examination.

By Mr. Hickey:

If any one member of our association desires prompt surrender of the bill of lading which carries with it payment

of the sight draft, he cannot arrange to compel that course of action in Philadelphia. He can not do it as a matter of competition. No one mill in any territory, Philadelphia or any other, can require any different or other terms from the customer than other mills are affording that customer. Consequently, the only way that you could get around the situation from the point of view of the mill would be by an arrangement which would practically be an agreement, concert of action among mills, which would probably be a violation of the entire anti-trust act, I suspect.

Recross examination.

By Mr. Glasgow:

I mean concerted action among all the mills that they would not deliver it until the bills were paid might be in contravention of the Sherman Act.

Ernest V. D. Sullivan was called as a witness on behalf of the complainants and, after having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My name is Ernest V. D. Sullivan. I am employed by the Terminal Warehouse Company as Vice-President and General Manager. I have been in the service of the Terminal Warehouse Company ten years. My duties in that employment are: general supervision over sales and opera-
[fol. 415] tions. By sales I mean the selling of our service, that is, I have charge of the solicitation of business.

The Terminal Warehouse Company is incorporated in Pennsylvania. It is engaged in the warehouse business, and more especially the merchandise warehouse business, which involves assembling and shipping carloads and less carloads of freight by railroad outbound from Philadelphia, and receiving and distributing inbound carloads of freight at Philadelphia from practically every state in the Union. By carload freight I mean freight transported by railroad at carload rates. The general offices of the Terminal Ware-

house Company are located at Beach Street and Fairmount Avenue in Philadelphia.

Our company has been in the warehouse business in Philadelphia since 1904, same being originally operated under the name of the Terminal Warehouse and Transfer Company, its corporate name being changed in 1924 to the Terminal Warehouse Company.

We operate nine warehouses and three piers in Philadelphia which are used for storage purposes. Those are listed in one of the exhibits, from "Distribution and Warehousing," that was submitted this morning.

I have assembled some statements and reproductions of printed and written data in shape suitable for me to offer in evidence as exhibits.

My exhibits 14 to 17 are advertising matter put out in the regular course of business by the Terminal Warehouse Company, and exhibits 19 to 29 are letters taken from the files of the Terminal Warehouse Company. I have the original letters with me.

Exhibit 30 is my own production.

[fol. 416] The aggregate of the floor space of the Terminal Warehouse Company for storage and handling of freight is 1,377,540 square feet. The Terminal Warehouse Company has continuously, for more than twenty years, received inbound freight at its warehouses and shipped outbound freight from its warehouse via the lines of the following carriers: The Pennsylvania Railroad; The Reading Company; The Baltimore & Ohio Railroad; The Southern Steamship Company; The Philadelphia & Norfolk Steamship Company; The Luckenbach Steamship Company; The American Railway Express; The Merchants and Miners Transportation Company; and various other coastwise steamship lines and motor truck companies. About 95 per cent of our inbound tonnage is transported by the Pennsylvania Railroad, the Reading Company and the B. & O. Railroad.

I will describe our warehouse facilities and then explain our means of access to each of the transportation agencies named:

Four of the warehouses and three piers previously referred to, i. e., "Spring Garden Street Stores," "Fairmount Stores," "Brown Street Stores," "Sales Building," and Piers 31, 35-1/2 and 36 North Wharves, have private side

tracks with direct track connections with the lines of the Reading Company and the Pennsylvania Railroad. We also receive freight at these plants from the Baltimore & Ohio Railroad through the medium of the Reading Company. The warehouse referred to as "25th Street Stores" has direct track connections only with the lines of the Baltimore & Ohio Railroad; and the warehouse referred to as "12th Street Stores" has direct track connections only with the lines of the Reading Company. I shall describe briefly the facilities of Brown Street Stores, which will indicate the character of our shipping facilities. This building is of [fol. 417] modern construction, reinforced concrete, with a floor load capacity of 250 pounds per square foot. It occupies a plot of ground 103 feet wide by 311 feet long, and comprises eight stories and basement, with a total floor area of approximately 275,000 square feet. Two private side tracks run the entire length of the building on the inside, and one track on the outside, giving us a capacity of spotting twenty carloads at one time. A platform adjoins these tracks, running the entire length and width of the building, for the expeditious handling of freight, to and from cars, to storage on the upper floors, or to trucks for city delivery. There is a depressed driveway running the length of the building enabling trucks to back in and load under cover. Modern labor-saving devices have been installed in this building, including high-speed elevators of 10,000 pound capacity, hoists and electric conveyors, sprinkler equipment, etc.

The aggregate value of the facilities which we operate as warehouses is approximately five million dollars.

We have the usual corporate offices, stock clerks, accounting clerks, reporting clerks, correspondence clerks, trade solicitors—both local and out-of-town, checkers, superintendents, traffic experts, and other employes engaged in the physical handling of freight in our warehouses and to and from railroad cars and trucks. We also have an extensive trucking department, for the operation of which we employ drivers, loaders and dispatchers.

I will describe the business activities of the Terminal Warehouse Company in detail, indicating what business [fol. 418] we do; how we solicit and, when we get business, what we do with it, that is, what services we render:

Merchandise warehouses are today a very necessary link in the chain of distribution by reason of the absolute necessity for economy and service in placing merchandise in the channels of consumption. The period of deflation which followed the recent world war necessitated complete change in merchandising methods, as buyers today are not lured into quantity buying by attractive discounts, but are regulating their purchases by what is called the "hand-to-mouth" basis. To meet this condition the out-of-town manufacturer found that he must establish spot stocks of his products at strategical distributing centers. The expense of establishing his own private warehouse, with its trained personnel, fixed rental, cartage costs—necessitated by his inability to secure warehouse facilities with trackage to meet his particular requirements, light, heat, taxes, etc., which must be borne in their entirety in a private warehouse, he quickly ascertained was prohibitive. The public distribution warehouse, with its total elimination of fixed charges, its trained personnel, its perfected facilities, solved the problem for the manufacturer, as he only pays proportionately for whatever his requirements necessitate.

Nearly every manufacturer in the United States is a prospective user of warehouse space, particularly when it is borne in mind that, in addition to warehouse operation economies effected by the use of public distribution warehouses, there are also savings in freight charges by the spread between the carload and the less-carload freight rates. We, as well as other merchandise warehousemen, [fol. 419] induce the manufacturer to ship his products in carload lots to us, and thereby obtain the application of the lower carload rates. The savings in transportation charges thus effected are frequently sufficient to pay all our warehousing and distribution charges. Another influencing factor is the time saving in the carload movement by railroad as compared to the less-carload movement, plus the fact that the possibility of damage to the shipment is minimized by the elimination of frequent handling at transfer points that is necessary in the transportation by railroad of less-carload lots. The manufacturer or owner of the goods, by this saving in transportation charges, is thus able to avail himself of the valuable trade services performed by the public merchandise warehouses without greatly increasing his distribution cost. In the absence of this warehouse distribution service,

the manufacturer, wholesaler or owner of the goods would be compelled to pay the higher l. c. l. rates to obtain the distribution of his goods in small lots, which I shall describe:—For instance, one of our customers is Colgate & Company, soap manufacturers, whose plant is located at Jersey City, New Jersey, who ship their various products to us in carload lots at carload rates by railroad. They mail us a manifest which indicates the contents of the car, both as to count and product. This manifest is turned over to our Traffic Department, who immediately traces the movement of the cars with the railroad to expedite delivery if possible. Disposition instructions on all or part of the contents of the car are also received by us from Colgate & Company prior to the arrival of the car. That portion of the carload which is not delivered in l. c. l. lots immediately upon arrival of the car is placed in storage awaiting future [fol. 420] withdrawal orders, which are usually given to us by the local sales representative of the manufacturer. We deliver this soap locally and to nearby suburban points, and some is shipped by railroad or motor truck in less-carload lots to points in New Jersey, Pennsylvania and Delaware. This manufacturer will keep shipping his soap to us in carload lots at carload rates throughout the year, always keeping sufficient stock on hand to meet the immediate needs of customers in this territory, and thus be able to compete with soap manufacturers whose plants are located in Philadelphia. Another illustration is that of the Ypsilanti Reed Furniture Company, Ionia, Michigan, manufacturers of Reed Furniture. This concern formerly shipped into this territory in l. c. l. lots, with the consequent delays in shipment, damages, and high transportation charges. When the advantages of spot stocks were pointed out to them, making it possible to effect immediate deliveries of their orders, plus the fact that there was a saving of $2.73 per hundred pounds in the spread between carload and less-carload rates, which practically paid their warehousing and distribution costs, they immediately consummated arrangements with us to handle their entire distribution problems in Philadelphia. This involves the services of unloading cars, storing contents of same in the warehouse according to grade, color, kind, etc., mailing checking report of the outturn of the car, paying freight charges, reshipping, making out bills of lading, tagging, furnishing daily reports

of withdrawals from stock, indicating to whom deliveries are made, and a monthly inventory showing all receipts and deliveries. Their ability to make immediate delivery of all [fol. 421] orders has resulted in a considerable increase in their sales. Another advantage is secured by this manufacturer in that, their products being seasonal in demand, they are able to equalize their production throughout the year by shipping all their overflow production to the warehouse, thereby also eliminating a large investment in reserve storage space at the plant. If desired, we also issue Negotiable Warehouse Receipts which are readily hypothecated at their bank; and in some instances we (the warehouse company) make advances to manufacturers on merchandise stored in our warehouses.

The Furniture Manufacturers Association of Grand Rapids ship us pool cars for distribution to the Philadelphia trade. This Association is composed of a group of furniture manufacturers located at Grand Rapids, who feel that by consolidating their less-carload shipments for Philadelphia into pool cars they can provide a saving in freight charges for the Philadelphia trade, and also give them a better and quicker service on their shipments. These manufacturers haul their less-than-carload shipments to one common loading point, where the consignments are loaded into cars. The Association ships these cars to themselves in our care, sending us a detailed manifest advising us as to just what is in the car. They also send up the bill of lading covering the car and, while the car is in transit, we check the time, knowing when it should arrive, and in the event of any delay we take the matter up with the railroad to assure prompt delivery. These cars move "Freight Collect," and of course we pay the carload freight to the railroad. The car is then spotted in one of our buildings where it is unloaded, the consignments properly sorted out, and in- [fol. 422] voices prepared for the various customers having consignments in this car, billing them the carload freight charges on a pro rata basis. Many of the consignments are then delivered by our trucks, and the consignees who elect to call at the warehouse for their merchandise are notified by an arrival notice showing the amount of freight and distribution charges they are to pay us when they call at the warehouse. We of course provide the railroad with a detailed outcheck of the car, also advising the Furniture

Manufacturers Association regarding contents of the car and its condition; and in the event of any damage we secure proper notation from the railroad and advise the Association of this. Shipping in carloads, as the Furniture Manufacturers Association do, saves the Philadelphia trade a considerable amount in freight charges. For example, the mixed carload rate on China Cabinets from Grand Rapids is $1.12 per hundred, and the less-than-carload rate on this commodity is $1.93 per hundred. Also, the carload movement from Grand Rapids is much faster than the less-than-carload movement, and the Philadelphia trade appreciate the saving in time that is effected.

Another account with whom we do business is the Chambers Manufacturing Company of Shelbyville, Indiana. This company ships us carloads of Gas Ranges to be stored for the convenience of their trade, and for the purpose of being able to handle their business on a cash basis. They sell their Ranges for cash, and have issued instructions to us as to how much cash we are able to collect for the various model Ranges when they are delivered. Their carloads are shipped to the Chambers Manufacturing Company, c/o [fol. 423] Terminal Warehouse Company, and upon their arrival we unload and carefully check the contents, advising the Chambers Manufacturing Company of the outcheck, and also giving the railroad a detailed report on the car. Any evidence of damage is properly called to the attention of the railroad and proper notation secured. Also, as deliveries are made to various dealers, notification is immediately sent to the Chambers Manufacturing Company, along with our check covering the amount of the collections. At the end of each month we provide these people with a detailed inventory of stock on hand.

For two other customers we practically provide a branch office service, with the exception of rendering invoices. These are the Pepsodent Company and the Wander Company, both of Chicago. They ship carloads of their products to themselves in our care and, when they are received, they are handled in the same manner as the Chambers Manufacturing Company's cars as to unloading and checking of contents, and of course report is made to the railroad and to the customer in the usual way. These people then send us orders to be delivered to the Philadelphia trade by our trucks, to be called for at the warehouse by their

customers, or to be reshipped to out-of-town customers by railroad freight, express, boat lines or parcel post. Both of these customers have furnished us with credit lists containing the names of customers in this territory with good credit ratings, and have authorized us to accept orders received direct from those dealers. They in turn notify their dealers that they can order from the Terminal Warehouse Company as their requirements necessitate, and such orders are honored by us as presented, after we have referred to [fol. 424] the credit lists to ascertain if the dealer is properly authorized to order this stock. We provide both of these customers with a daily detailed report which shows all receipts, merchandise delivered, and balance on hand. In making shipments we prepare bills of lading, express receipts, etc., and also properly mark or stencil packages. Very often freight charges are to be prepaid and we advance the freight to the railroads for our customers. Sometimes it is necessary to repack or recondition merchandise, and we take care of this in the same manner as the customer would take care of it if his own employe were on the premises. Very often the Wander Company will prepay freight on a dealer's consignment if the order equals a certain amount in dollars and cents, and of course this means that we have to extend the various items on the order to establish a total in order to determine whether the consignment is to be shipped freight prepaid or collect.

Our trucking service is a valuable adjunct to our merchandise warehouse business as it enables us to give a store-door delivery service as expeditious as express service, but at much lower rates. Serving as we do thousands of clients, with almost 100 per cent productivity of our equipment, has enabled many small concerns to abandon their private trucking operation with its attendant excessive cost by reason of the great percentage of time which their trucks were idle.

Distribution of carload freight by a merchandise warehouse is an extensive task when you bear in mind all the services attendant to such distribution as undertaken by the warehouse man under a continuing agreement, i. e., recoopering service; packing, marking; addressing and billing shipments; the separation and distribution of carloads of [fol. 425] merchandise by marks, brands or kinds, in ac-

cordance with written instructions from the owners; weighing; correspondence furnishing information to our customers; making c. o. d. collections and remitting to our customers; prepaying bills of lading, shipping orders and express receipts; paying of freight charges on inbound shipments and prepaying freight charges on outbound shipments; and keeping stock records and furnishing inventories to our customers; all of which must be kept as accurately and carefully as bank records or railroad freight office records.

In our solicitation of this business we approach producers, manufacturers and wholesalers, describe our facilities and services and quote our rates or charges for same. If the prospect is located in Philadelphia we solicit them personally, but if out-of-town, we either have our traveling solicitors call on them or conduct negotiations by mail. Where our solicitation efforts are successful, we make an agreement with the manufacturer or wholesaler, incorporated in which is specified the railroad routing we prefer to have the goods shipped over, to handle his business for specified periods of three months, six months, a year, or longer. Most of our business is obtained through correspondence or as the result of personal calls by our traveling solicitors, as the majority of our customers do not have Philadelphia offices or representatives other than the Terminal Warehouse Company. By that direct solicitation or by correspondence, supplemented by our advertising, we and other merchandise warehouses induce these out-of-town manufacturers and wholesalers to ship their goods by railroad to us, or in our care, and we then distribute their [fol. 426] goods to points within two hundred miles of Philadelphia by railroad, steamship, motor truck or express carriers, rendering every service necessary to facilitate the trade of our patrons.

All of the services which I have described, including the loading of freight into railroad cars and the unloading of freight from railroad cars, are warehouse trade services which are performed by all merchandise warehouses under the terms of their contracts and arrangements with the manufacturers and wholesalers. It seems unnecessary for me to give additional details of our trade services because the details of the merchandise warehouse business, similar to our business and that of the subsidized warehouses, are

presented in the report of the Department of Commerce entitled, "The Merchandise Warehouse in Distribution."

There are five classes of inbound shipments to our warehouses: (1) Carload shipments consigned to us by manufacturers or wholesalers who ship from points outside Philadelphia for distribution in l. c. l. lots; we are the only representatives of these concerns in Philadelphia. (2) Similar consignments of goods from such outside concerns who have office space and sales agents in Philadelphia, but who have no facilities for receiving carload shipments and unloading contents of the cars in Philadelphia. (3) Carload shipments of goods for manufacturers and retailers in Philadelphia who have no facilities for receiving such large lots of goods as a carload is; they take the goods from our warehouses in small lots of one or two tons at a time. (4) Merchandise shipped to us and put in storage under condi- [fol. 427] tions enabling the owner to pledge the goods as security for loans. (5) Surplus stocks of goods shipped to us by manufacturers and put in storage in the off season.

99 per cent of the outbound shipments handled at our warehouses are l. c. l. shipments. We make those outbound shipments in connection with the distribution of the inbound carload shipments in l. c. l. lots. The other 1 per cent consists of isolated outbound carload shipments, which are exceptional.

There are four classes of rate payers who pay the freight charges on inbound shipments handled at our warehouse: (1) Some of the consignors prepay the freight charges at point of origin. (2) We pay the freight charges on some of the carload shipments and then allocate these charges and our distribution charges to the l. c. l. lots which we distribute, collecting the allocated charges from the receivers of the l. c. l. lots of goods. (3) We pay the freight charges on some of the shipments and then collect the freight charges and our warehouse charges from the consignor of the goods. (4) The railroad companies collect the freight charges on some of the shipments directly from the local dealers or manufacturers in Philadelphia for whom we handle the goods.

The warehouse companies that receive allowances from the railroads at Philadelphia are: Merchants Warehouse Company; Pennsylvania Warehousing and Safe Deposit Company; Philadelphia Warehouse and Cold Storage Company; and the Quaker City Cold Storage Company.

The Terminal Warehouse Company is a competitor of each of those warehouse companies that receive the allowances. The allowances have been used to divert business from the Terminal Warehouse Company to our subsidized competitors.

[fol. 428] I will explain that use of the allowances:

There are hundreds of well known concerns that employ warehouses to distribute their products in the Eastern cities. We and the subsidized warehouse companies actively compete in soliciting the business of those concerns. Those concerns ship their goods to the warehouse that can offer them the lowest aggregate charge for the distribution of their goods. The aggregate charge is made up of the railroad freight rates to the warehouse and the warehouse charges. Our subsidized competitors are enabled, by the allowances, to quote lower aggregate charges than we can quote and they underbid us and take competitive business away from us.

Some specific instances of that underbidding are:

Our subsidized competitors offer to distribute the merchandise of those concerns free of charge when the distribution is accomplished within 48 hours after the arrival of the goods at their warehouses, and at charges lower than the cost of distribution service when the goods are distributed later than the 48 hour period. For example, the Corn Products Refining Company have been one of our most valued customers for over 9 years. Mr. Harvey Miller, President of the Merchants Warehouse Company, is trying to entice the business of the Corn Products Refining Company from us, and the inducement which he offers is the total elimination of any handling charge whether the goods are delivered within 48 hours, a year or longer period, after the arrival of the goods at the Merchants Warehouse.

Some of the letters I offered in evidence substantiate that statement, without specifically mentioning the Mer-

[fol. 429] chants Warehouse individually.

The subsidized warehouses have enticed some of our good customers from us, including the Vacuum Oil Company, Post Products Company, Paper House of Pennsylvania, J. C. Hubinger Company, J. B. Ford Company, Bon Ami Company, Pratt Food Company, Theo. Presser & Company, Philadelphia Iroquois Company, and the Allis-Chalmers Manufacturing Company. We have been com-

pelled to reduce our normal warehouse charges in order to hold some of our customers under the disadvantage of the allowances.

Our best customers have demanded that we perform handling service free, or at reduced rates, as offered by the subsidized warehouse companies, and we had to accede to their demands or surrender the business to the subsidized warehouse companies. We are compelled to handle some of that business at rates lower than our costs of service. Some of these customers are Colgate & Company, Nestle's Food Company, Corn Products Refining Company, Kellogg Sales Company, Century Electric Company, Gardner-Denver Company, Proctor & Gamble Distributing Company, Spencer Kellogg & Sons and the D. L. Ward Company.

I could name more than a hundred large concerns that use merchandise warehouse distribution service extensively in marketing their products at the principal Eastern cities. I have concluded that the solicitation of business from certain of those concerns by the Terminal Warehouse Company would be unprofitable under present conditions.

We have not solicited business from many of such concerns during recent years and we do not intend to solicit their business while the allowances are given to the subsidized warehouse companies. If we should obtain their business at the rates they would give it to us for under the [fol. 430] competitive influence of the allowance, those rates would be lower than our handling costs. Therefore, we are compelled to abandon that business and let our subsidized competitors have it without a struggle. Those concerns include Washburn-Crosby, Quaker Oats Company, canned food brokers, sugar brokers—and in fact all patrons of warehouses whose products are promptly distributed or whose products are of heavy density, which business is eagerly sought after by the subsidized warehouses, for, by reason of this weight the allowance which they receive from the railroads for unloading would amount to from $12.00 to $15.00 per carload.

I will read the following from a letter dated June 22nd, 1928, from the Merchants Warehouse Company addressed to George Steere & Sons, which is included in Exhibit 6.

"There would be no charge on orders filed with us before the car is unloaded, and hauled by your customers within

forty-eight hours after the arrival of the car. If not hauled within forty-eight hours, the regular storage and labor rates would apply."

Now I will explain what investment charges, labor charges, and other charges are incurred by the Terminal Warehouse Company on freight hauled by Mr. Steere's customers within forty-eight hours after its arrival at warehouses of the Terminal Warehouse Company, if that freight were consigned to the Terminal Warehouse Company:

We would have to bear our investment in the warehouse where we handled the freight, the taxes, repairs and cost of maintenance to that property and equipment, also the proportionate share of the salaries of our general organization engaged in transferring the freight from the car and distributing it in small lots to customers of George Steere [fol. 431] & Sons. In order to meet the competition reflected in the offer in that letter, we would be compelled to handle the freight free of charge, when distributed for them within forty-eight hours of its arrival, and we would receive no compensation whatsoever on our investment, salaries, or to pay the wages of our laborers who perform the distribution. In other words, to meet that competition we would be compelled to do business without deriving any compensation therefor. Of course, the Merchants Warehouse Company is compensated for that service in the allowance of fifty cents a ton which is obtained from the Pennsylvania Railroad Company. We are compelled to surrender to the Merchants Warehouse Company virtually all of the business where the major portion of the carload is distributed within forty-eight hours. We can take some of the business and shrink our charge for distribution, or waive it entirely, when the larger part of the tonnage is not distributed within the forty-eight hours after arrival. But, of course, in those instances we are compelled to shrink our normal business profits.

When inbound carloads of freight consigned in our care arrive in break-up yards of the railroads in Philadelphia, the railroads immediately send us an arrival notice and a constructive placement notice which contains the usual information as to car number, shipper's name, contents, weight, etc. Upon receipt of such notice we issue a written

order to the railroad requesting them to place said cars in the building in which that particular customer's account is carried. When the car is placed, our Traffic Department gives to the warehouse superintendent a manifest of the car and a letter of instructions pertaining to distribution of the contents. The seals are then broken, the car unloaded and [fol. 432] contents checked as to outturn and condition; that portion of it which is intended for immediate reshipment is reshipped, and the balance put into storage according to the grades and marks. That portion of it which is put into storage is later on reshipped in l. c. l. lots by railroad, motor truck or water carrier, in accordance with written instructions of the owner of the goods. When incoming carloads are shipped collect, the railroad renders us a freight bill for the transportation charges, which we in turn pay within the prescribed time, namely, 96 hours. We also sign our name as the consignee upon the delivery receipt which the railroad makes up and presents to us.

On inbound cars placed for unloading the first activity of the Terminal Warehouse Company is to break the seals of the cars and then unload them. At the time we break the seals of the cars we are working under the instructions of our customers. Of course we have contracted to distribute the freight. We receive orders for distribution of each carload, which are mailed to us by our customers generally on the day they ship the carload of goods. We act on those orders when we break the seals, but we do not receive orders for distribution of some of the freight until several days or months after its arrival at our warehouse.

I will describe generally and very briefly the kinds or types of billing on inbound shipments and on outbound shipments:

When new business comes to us in response to our advertisements, the shipments generally come billed to us as the sole consignee thereof. Several of our customers have continued to use that form of billing for years; but we have instructed a large number of our customers to use the "care [fol. 433] of" billing because we prefer that kind of billing.

Of the two classes of inbound shipments some are generally billed to the Terminal Warehouse Company as the sole consignee and the other class of shipment is the care of billing.

There is no difference in the service performed by the Terminal Warehouse Company in handling shipments received under the "care of" billing and in handling shipments billed to it as the sole consignee thereof. The service performed by us in handling shipments covered by those two forms of billing are identical.

Those concerns whose names appear under the caption "Consignee" on those freight bills are not actually located in Philadelphia, and did not appear there to receive the shipments. They are usually outside concerns and they do not come to Philadelphia to receive the inbound shipments. The Terminal Warehouse Company contracts to receive the shipments in Philadelphia and to perform all of the consignee activity in Philadelphia.

We receive the inbound carloads at our platform on our private side tracks. We unload the car and sign a receipt to the railroad for that carload of freight transported at carload rates and in many instances we paid the freight charges on those carloads.

Several prominent business concerns in Philadelphia that have warehouses equipped with railroad sidetracks are John Wanamaker, the well-known department store, whose warehouse is located on Washington Avenue, and his sidetrack connection is with the Pennsylvania Railroad; Straw-
[fol. 434] bridge & Clothier, also a well-known department store; the American Stores Company and the Great Atlantic & Pacific Tea Company, well known retail grocery chain stores; Sears, Roebuck & Company, the well known mail-order concern; and the Goodrich Tire & Rubber Company. I have visited those warehouses several times. I have visited most recently Sears, Roebuck & Company and Strawbridge & Clothier on July 24, 1928, and July 28, 1928.

Those two concerns employ our warehouse facilities at times when their own facilities are insufficient, and in their negotiations with us, conducted with me, and in according them the warehouse services they needed, I became informed of the use to which they put warehouse facilities.

They use warehouse facilities to enable them to buy stocks of goods in the quantities and at the times that will enable them to take advantage of lowest market prices, and at the same time supply the demands of their customers. In other words, they get the goods in carloads, at carload rates, and

then sell and distribute them through their retail stores in l. c. l. lots to their customers.

The retail dealers in Philadelphia use the facilities of the merchandise warehouse companies because the high property value and high rentals of retail stores on prominent business streets preclude storage of large quantities of goods there and compel these concerns to use warehouse facilities not handicapped by the high property values. The merchant in the small town where property values are low owns facilities for receiving and storing carloads of goods. [fol. 435] But in the large cities like Philadelphia, where property values are high, the merchant or retailer owns or rents limited selling facilities and then hires warehouse services from the large warehouse companies which enables the merchant or retailer to obtain use of facilities for receiving and storing his carload freight.

Generally the manufacturer or wholesaler asks us to specify the route of inbound and outbound freight. They do not know what railroads have direct access to our warehouses and they desire to avoid extra switching charges and to get the lowest possible freight rates. In most cases we specify the railroad route when we enter into a contract or arrangement to handle the goods.

We don't pass those additional freight claims arising from the allowance on to our customers because we can not pass it on to any person. When we do not, or cannot, shrink our aggregate charge to reflect the allowance the outside concern will not give us his business. In such case he gives his freight to the subsidized warehouse companies who underbid us.

Assume that the giving of the allowances was stopped on September 1, 1928, we would not be relieved of the discrimination on and after that date. The subsidized warehouse companies have used the allowance for many years to build up their business and to suppress the development of the business of their competitors. When the allowances are discontinued they will have the established trade built upon those allowances and they will keep it for a long time. It will require years for us to recover our fair share of competitive merchandise business.

[fol. 436] None of the warehouses of the Terminal Warehouse Company operated to their full capacity during the period from January 1, 1926 to date, due to the handicap

of being forced to compete with warehouses who receive allowances from the railroads for the unloading of cars, amounting in many cases to as much as $15.00 per carload, we were never able to obtain a fair proportion of the warehouse and distribution business of Philadelphia.

At the time the Terminal Warehouse Company had that unused capacity it was being deprived of merchandise business by the competition of the four subsidized warehouse companies receiving the allowances.

I will mention the individual commodities and describe in detail how the Terminal Warehouse Company was deprived of reasonable opportunity to handle those commodities under the competition of the four subsidized warehouse companies:

The storage and distribution of flour is controlled by the subsidized warehouses solely by reason of the unloading allowance granted to them by the railroads. This allowance enables the subsidized warehouse to totally eliminate handling and storage on all that portion of the cars that is delivered within the first 48 hours after the car's arrival at the warehouse. In the case of flour they also eliminate any handling charge on that portion of the carload going into storage and eventually delivered in l. c. l. lots. In soliciting these flour accounts for storage and distribution, we were told that the construction of our warehouses and their locations were ideal for the flour trade, but that they would be unable to give us any business unless we were [fol. 437] willing to meet the rates and extend the free handling privilege granted to the flour trade by the subsidized warehouses. In former years we handled thousands of bales of cotton linters annually through our warehouses at rates that were only nominally compensatory. However, about four years ago, the Merchants Warehouse Company started a drive for this class of business and quoted rates approximately 50 per cent less than our charge. They were able to do this only because of the allowance they received from the railroads. Being unable to meet the rates of the subsidized warehouses, the Terminal Warehouse Company has lost this business entirely. It is absolutely futile for the Terminal Warehouse Company to solicit the storage and distribution of broom corn and feed as the jobbers or dealers in these products are in many cases able to distribute the entire carload within 48 hours of the ar-

rival of the cars at the subsidized warehouse and do not have to pay one cent for all the clerical and physical labor necessary to properly distribute this merchandise because the subsidized warehouses receive their recompense out of the unloading allowance paid them by the railroad companies.

I heard the stipulation that was made between counsel this morning as to the form of billing of freight delivered to the Merchants Warehouse Company—there were two forms of billing. As to whether it makes any difference whether the freight is billed in one or the other of the two forms shown in that stipulation, it makes no difference.

The substance is the same under either of those two forms of billing. When we solicit business from out-of-town concerns the aggregate charge is what gets the business. Our aggregate charge is the same under either form of billing and we perform similar distribution service under either form of billing. The solicitation and the service performed by the subsidized warehouses is the same under either form [fol. 438] of billing, and the discrimination against us is not less on a shipment billed in their care, which they distribute, than it would be when billed to any one of those subsidized warehouses as the sole consignee thereof. The name entered on the bills of lading and railroad billing are those that the warehouse company suggests be put on when it contracts to distribute the goods. We can have the consignors bill their shipments to John Doe or Richard Roe, in our care, and those shipments will be delivered at our warehouses, and when we distribute the shipments the services which we render will not differ from the services which we would render if the shipment had been billed to the Terminal Warehouse Company as the sole consignee thereof. We contract to distribute carloads of goods for outside concerns.

My exhibits 31 and 32 are copies of letters from the Traffic Department of the Pennsylvania Railroad and the Traffic Department of the Reading Company relating to these allowances. I will state the circumstances which led up to the writing of those letters:

Back in 1924 we had repeated requests from the patrons of our warehouse to reduce our charges or eliminate the handling charges. We, of course, informed them that we could not do it. They referred back to us the practice of

the warehouses which I will call the subsidized warehouses, according that privilege to shippers, and I informed them that we, as presumably other merchandise warehouses, had made repeated requests to the railroads to have this discrimination removed.

I was trying to give you the reason why this Association called the meeting. It was the result of their request for a [fol. 439] lower rate. Finally, we just told them we could not do anything for them, and they at their Association meeting resolved to call in representatives of the railroads at a meeting. That is the Association of Manufacturers Representatives, Inc., Philadelphia.

So they called this meeting at which were present representatives of the three railroads, a great number of the members of this Association, plus some few warehouse men. They protested to these representatives of the railroads as to the practice of confining the allowance to one or two warehouses and not making it applicable to all warehouses so that all members of that association could get the benefit of the free unloading or handling service.

The representatives of each of the three defendant carriers who was present at that meeting are:

As I recall them; Mr. W. H. Willis, Division Freight Agent of the Pennsylvania Railroad; I believe Mr. B. M. Croll, Division Freight Agent of the Reading Company and I do not recall who represented the Baltimore & Ohio. As I recall it, the Baltimore & Ohio was represented—I do not know that—I would not swear to it.

These representatives of the railroads suggested to the Association that they write a letter to their respective railroad companies and that same would be taken up by the proper officers and reply made. That is the reason for these letters.

The letters were written by the Association and Exhibits 31 and 32 are the replies received.

Mr. Hickey: I offer Exhibits 14 to 32 in evidence.

Examiner Brown: Exhibit 15 contains statements of class [fol. 440] rates from Philadelphia. Are you offering that as evidence of the rate from Philadelphia?

Mr. Hickey: No.

Examiner Brown: Those rates may be disregarded?

Examiner Brown: Exhibits 14 to 17, inclusive, and Exhibits 19 to 32, inclusive, will be received in evidence. Ex-

hibit No. 18 will also be received in evidence, but is understood that rate statements in this exhibit and statements with respect to storage charges in dollars and cents will not be considered as a part of the exhibit.

(Exhibits Nos. 14 to 32, inclusive, were received in evidence.)

[fol. 441] Room 1103 I. C. C. Building,
Washington, D. C., Wednesday, August 1, 1928.

Met pursuant to the taking of adjournment at 10 o'clock A. M. before R. M. Brown, Examiner.

Appearances: The same as heretofore noted.

Examination of ERNEST V. D. SULLIVAN resumed.

Cross-examination.

By Mr. Glasgow:

This Terminal Warehouse Company has been in business since 1904, I presume in some of the same locations in which we are now doing business. They had possibly four or five warehouses. I do not know what those buildings had been used for previous to that time. The company is a corporation now. It was incorporated I would say roughly [fol. 442] around 1920. Prior to that time it was an individual—Thomas D. Sullivan (my uncle)—trading as the Terminal Warehouse & Transfer Company.

I do not know whether there were any other partners in it. It was before my time, and I am not familiar with it. I have been with the company only during the last ten years. The partnership came down to 1920—no, not partnership. So far as I know, the business was conducted by Thomas D. Sullivan, trading as the Terminal Warehouse & Transfer Company, approximately down to 1920.

So far as I know, nobody was associated with him prior to the formation of the corporation. I think it was originally capitalized for a quarter of a million dollars. I am only a very minority stockholder now. I became a stockholder about the time it was incorporated, about 1920. I do not know how that stock was paid for. Mine was given to me.

The capital now is $500,000. I do not know whether that was paid in in cash. The stock is non-assessable, at a par value of $100 a share. I do not know what surplus the company has. I stated the value of the facilities which we operated as warehouses to be about $5,000,000. I did not say we acquired them, I said that we operated them. We operate them for ourselves. They are owned—some by us and some by other people. I am stating in that $5,000,000 somebody else's property. We operate it on lease. The proportion of that that is owned by our company I would say is approximately $3,000,000 or $3,500,000. I do not know where the money came from for the investment of three or upwards of three million dollars in this company with a capital paid in for capital stock of $500,000.

[fol. 443] The business has been profitable to a certain degree. There have been profits made. It was profitable last year. I do not know what dividends they were paying. I did not get any dividend—I did not inquire why.

I would say I am a small stockholder. I do not know what were the net earnings last year of this company. It did not pay dividends last year, not to my knowledge. At least, I did not get any. It did not pay any the year before, not to my knowledge, because I did not get any.

I am a director of the company and have been a director since its incorporation. The company never paid dividends to my knowledge. I would know, unless it would happen to have been done when I was not present at a directors' meeting. I said we made some profits.

Naturally the company has made return for taxes to the Government of the United States when earned. I do not know for what years. I have nothing to do with that part of our organization's work, you will have to ask our treasurer that question. I do not know whether or not any new capital was put into the concern after its organization. Our company is engaged in loaning money to customers, to a very, very slight degree. That is a part of my activities, being in charge of sales. By sales I mean solicitation, sales of warehouse service, trade service.

Q. Let me ask you something. I noticed in your testimony that you referred to the Merchants Warehouse Company having taken away, I think you said, the business of the paper company of Pennsylvania from your company?

[fol. 444] A. Yes, sir.

Q. Is that the correct name of the company?

A. It was at the time we were doing business with them.

Q. In the first instance, you took it away from the Merchants, did you not?

A. I am not familiar with the fact that they were with the Merchants before we got it, Mr. Glasgow.

Q. Do you know where it was before you got the account?

A. No, I do not.

Q. Then, is it not a fact that after you took it away from the Merchants, the Merchants got it back from you?

A. I know that the Merchants got it back from us, but I would not answer the question as you have asked it, Mr. Glasgow.

Q. It was within the line of your business as Solicitor to know where the business came from, was it not?

A. Not necessarily, Mr. Glasgow. The primary interest is to get it.

Q. But don't you know where you get it from?

A. We get it from the man we solicit, yes, but we don't necessarily have to inquire with whom he is doing business.

Q. You took away from the Merchants Warehouse Company the business of the Curtis Publishing Company, recently, did you not?

A. We did not take it away. They gave it to us.

Q. It came from the business theretofore done by the Merchants?

A. Yes, sir.

Q. Now, I suppose you make a distinction, then, as to [fol. 445] when the Merchants takes it away from you, and then when you go to get it, you did not take it, but it was given to you. Is that the distinction?

A. I make a very strong distinction. Do you want the reasons?

Q. I did not ask you for them. If you want to give any, go ahead.

A. The reason is they are able to get it away from us by reason of this allowance and free handling which they perform. We cannot take it away from them.

Q. How do you get it?

A. In the instance to which you referred, they asked us to handle the account.

Q. Who?

A. The Public Ledger.

Q. You were not trying to get it?

A. We would like to get it.

Q. Now, Mr. Sullivan, tell me, did you go out and try to get the business?

A. Not at the time we secured it.

Q. Did you go before?

A. Years before, yes, sir.

Q. The Bon-Ami business, you also referred to as having been taken away from your company by the Merchants. Did not you get it from the Merchants previously?

A. Yes, sir.

Q. You got it from them and then they got it back from you?

A. Yes, sir.

Q. You got the Simmons-Bed Company from the Mer-
[fol. 446] chants, did you not recently?

A. Yes, sir.

Q. The Merchants had been conducting the business before and you took it away from them, did you not?

A. We did not, no.

Q. You still have it?

A. We did not. That was all done by a real estate agent in Philadelphia, Mr. Glasgow. The Terminal Warehouse Company had nothing to do with that.

Q. But you got it?

A. They utilized one of the facilities which we had, yes.

Q. Don't let us be technical. They are taking warehouse service from you, are they not?

A. No, sir.

Q. They are taking a warehouse space, from you, are they not?

A. They rented an entire building which we had no further use for.

Q. As a matter of fact, there are other cases where you have taken business from the Merchants and other cases where they have taken from you?

A. I presume there are, yes, I would say, yes, Mr. Glasgow.

Q. When I referred to the Curtis Publishing Company, I should have said instead of that the Public Ledger Company.

A. I knew what you had reference to.
Q. That is what you had reference to?
A. The same thing, yes.

[fol. 447] Cross-examination.

By Mr. Bikle:

When I explained the manner in which traffic came to our warehouse, I said that some of it came billed to us and some of it came billed to others in our care. And I also said that we preferred to have it come billed to others in our care. The reason is we operate numerous warehouses in Philadelphia. Possibly I can better explain it by referring to a particular commodity, we will say, linseed oil. We handle about six different accounts, who store linseed oil with us. If our customer did not indicate on the bill of lading his name and those cars came billed directly to the Terminal Warehouse Company, we would have no manner or means of knowing whose linseed oil it was, or into whose warehouse we could direct the railroad to put that car. That is the primary reason.

Another very valid reason for it would be that there would be a complete tie-up of chain of title in the event our customer wanted to borrow on that merchandise. That is an important commercial reason, from his point of view, in having it consigned to himself in our care.

Q. If it is consigned to you—I don't want to use a controverted term—but if it is billed to you, then, he is not in a position to borrow in the same way from the banks on the shipment, is he?

A. The title would be somewhat clouded, I would say, Mr. Bikle.

Q. Now, taking the first reason, as I understand it, you preferred to have it billed to the owner or his representative in your care, so that you may know how to follow his wishes in regard to the handling of that traffic.

A. Well, primarily our wishes. We would not know where [fol. 448] to order the railroad to put the car unless we knew who owned the merchandise contained in the car.

Q. That is what I mean. You have to take care of that

matter in order to determine how it shall be handled, don't you?

A. So far as I know who owns it, if that is what you mean, Mr. Bikle.

And in our handling that freight we follow the instructions of the owner of the goods or his representative in respect to delivery to certain persons. Now, where a shipment is involved, that is usually left to us to determine via what means of conveyance or what route or steamship line that shipment should move. But if it is left to us, it is because the owner or its representative chooses to leave it to us. I mean, if he asserts the privilege or saying what carrier we should use, or what route we should use, we would recognize his directions, but that would be the rate exception, that they would so designate it, but we recognize his right to do it.

Now, as to what proportion of the shipments are billed to us direct and about what proportion are billed to the owner or representative in our care, I would say that approximately ten per cent were billed direct to us and the balance in our care. I referred to the shipments of Colgate & Company as being shipped to us; if I recall correctly, they are billed directly to us.

Now, as to the payment of the freight charges, we pay the freight as a part of the service which we render, and they are taken into our account, all such matters as taxes, interest and labor, and so forth. I said we had to keep our records as carefully as a bank.

We do not recollect those freight charges from the owner or his representative in their entirely. We do not recollect [fol. 449] from Colgate & Co. the freight charges on their shipments—that happens to be an account that bills their shipments prepaid. When we agree to handle the distribution of an account, we take all items of expense and they are taken into consideration, of course, when we make the rate, but we do not pass on the freight charges in their entirety to our customer.

Q. When you make a distribution, such as you have described, for the person to whom the shipment is billed in your care, don't you distribute the freight that you pay the railroad, in the first instance, proportionately against

each part of that that is turned over to the ultimate receivers?

A. If you have reference to the one account that I specifically mentioned yesterday, that is, the furniture manufacturers, I would say yes.

Q. Is not that the practice generally.

A. That is what we call a pool car.

Q. Is not that the practice generally on the pool car?

A. No, that is the exception.

Q. Then, will you explain just what the method is by which you do business with regard to the pool cars, describing the matter of freight charges?

A. In the matter of freight charges, we, in many instances, do as they do in storage accounts, pay the freight, take it into our accounts, handle it, and then we bill them, we will the aggregate charges for recoopering, clerical services, handling and so forth.

Freight is incorporated in our charge. A number of items also would be included in there as well as freight. [fol. 450] Freight is one of the items taken into consideration in our billing. The way we handle it, is that freight is just an item of expense, the same as any other item of expense, such as labor, interest, taxes, and so forth or anything else, and when we bill out charges for the services we render, freight is one of the items, of course. I think it is specifically included in the bill to our customers. As to whether or not it is included in its entirely, well, if, for instance, we have to reduce our charges in order to meet the competition of that so-called subsidized warehouse, freight bears its percentage of shrinkage, the same as any other item of cost we would have. In other words, in some instances, we absorb a proportion of the freight charges, and in some instances we pass the entire charge onto the customer.

The ordinary practice is on our bills to our customer we show the freight as an item charged against him—it is a part of the bill.

I referred to certain companies which have warehouses, John Wanamaker's, Strawbridge and Clothier and Sears Roebuck. Those warehouses are not utilized for the storage of business, other than that of the owners. I mean, they are not in the business of taking property for storage.

My testimony, however, indicates that my thought that the smaller dealers which could not afford warehouse space were able to find in our company and other companies facilities that helped them on account of the ability of the larger dealers to have these warehouses. In other words, they would have to have some warehouse facilities, if they received carload lots, and if they themselves don't have it, they have to employ the facilities of someone who has it.

The only significance of the reference to these larger [fol. 451] companies was they had warehouses with private side-tracks. It is of material advantage to these smaller dealers to have warehouse facilities, such as ours, in their competition with these larger dealers. We get about one per cent of our business from points inside Pennsylvania—not over one per cent of the total business that we received is intrastate business.

It is my view that we are not getting our fair share of the business. I regard as our fair share—well, more than we are getting today.

By Mr. Webber:

I said that the Baltimore & Ohio served or reached one of our warehouses, the one at 25th and Locust. We only handle automobiles there. It is a temporary arrangement.

By Mr. Woodcock:

We don't do any cold storage warehouse business. We have no refrigeration. We store some commodities which are sometimes put into cold storage warehouses. We have no refrigeration facilities in any of our warehouses. The capacity of our warehouses has been increased since I went with the company, ten years ago. I would say approximately 40 per cent in square feet.

By Mr. Stilwell:

Mr. Sullivan, you have taken business away from the Pennsylvania Warehousing and Safe Deposit Company, haven't you?

A. I don't recall any at the present time. If you would mention the names of any accounts, I might be able to tell you.

Q. Now, then, I am going to ask you about a particular case. You took the Theodore Presser business away from the Pennsylvania Warehousing and Safe Deposit Company, did you not?

[fol. 452] A. I did not know that Theodore Presser was with the Pennsylvania Warehousing & Safe Deposit Company. I thought they were at the Merchants Warehouse, as I recall.

Q. You, in your direct testimony yesterday, complained that the Merchants Warehouse had taken the Cord Products Company away from you, did you not?

A. No.

Q. You did not say that?

A. No, sir.

Q. You took it away from the Pennsylvania Warehousing & Safe Deposit Company, did you not?

A. We have had that account for about nine years. That was just about the time I came with the company.

We receive shipments on order notify bill of lading. We handle them the same as any shipments we receive subject, of course, to the fact that we won't make delivery prior to the surrender of the order bill of lading. As to whether those goods go into our warehouse before the draft is paid, well, I would not say before the draft is paid. I would say before the bill of lading was surrendered to us they go into our warehouse. Then the notified party comes along afterward, presenting the bill of lading, and takes the goods, whomsoever would secure the bill of lading from the bank and present it to us. Normally it would be the notified party. Those goods do not remain in warehouses in such cases for any considerable period before the surrender of the bill of lading; from the time we receive them until the notified party, or somebody else, takes the goods. Not in package freight, I would say no, because the railroads are [fol. 453] after us constantly to surrender them almost immediately upon receipt at the warehouse.

We handle no other kind of freight except package freight, unless you would construe automobiles other than package freight. The method of handling automobiles is about the same as in handling other freight, only at certain times of the year bills of lading are handled a little bit differently on automobiles than on what we call merchandise freight.

Redirect examination.

By Mr. Hickey:

In response to Mr. Glasgow's questions about sometimes the Terminal Warehouse Company getting the business of the Public Ledger Company and the Bon-Ami Company and the Simmons Bed Company, and sometimes the Merchants Warehouse Company getting the business of those concerns, there was cutting of rates involved in the competive activities of those two warehouse companies in getting the business of those concerns and in the cutting of the rates to get that business the Merchants Warehouse Company had a distinct advantage, but the Terminal Warehouse Company did not. That advantage was the allowance which they received from the railroads for performing the unloading of cars.

Recross-examination.

By Mr. Bikle:

We apportion freight charges in conjunction with our distribution of the charges to the persons to whom we are directed to distribute. All items of expense are billed to our patrons. Freight is an expense and therefore it would be billed—I would not say specifically billed.

[fol. 454] E. F. Morgan thereupon was called as a witness on behalf of the complainants and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I was in the service of the Interstate Commerce Commission from June 15, 1909 until June 15, 1920; the first five years in the Bureau of Carriers Accounts as Examiner of Accounts, and the last six years with the Bureau of Valuation as a District Accountant of the Central District in Chicago. As a condition precedent to that employment I took a Civil Service examination for position as Examiner of

Accounts, Interstate Commerce Commission and was passed and certified by the Civil Service Commission.

Prior to my services with the Interstate Commerce Commission, from 1897 to 1909, I was in railroad service as Telegraph Operator, Station Agent, Chief Clerk to Division Superintendent, Train Dispatcher and various capacities in the Accounting Department.

Mr. Bikle: Mr. Examiner, would it not be better, subject to Mr. Hickey's approval, to let the witness go ahead with his testimony and if any of us question his competency, we can ask that he be qualified.

The Witness: From June 15, 1920, until the early part of 1926, I was with the C. B. & Q Railroad Company in the Accounting Department, particularly in connection with valuation matters, federal and state taxes.

From January 31, 1928, I made a study of the published tariffs of the defendant carriers, the Pennsylvania Railroad Company, the Baltimore & Ohio Railroad Company and the Reading Company, in so far as those tariffs have [fol. 455] application to the allowances under consideration in this case. I also examined the bills and invoices, car record books, shipping orders, bills of lading, quotations of services, charges, circulars, advertising matter, and correspondence of the warehouse companies operated by the complainants. I also viewed their buildings, structures, railroad sidetracks and platforms. I observed the various quantities of goods, wares and merchandise contained in those warehouses, also the activities of employees of the complainants in handling the goods, wares and merchandise there. I also sought and obtained whatever information I needed from the officers and employees of the complainants and examined whatever records of complainants I needed for the information which I have assembled. All of the warehouse properties which I deal with are located in the City of Philadelphia, in the State of Pennsylvania. At various times during the period mentioned I also viewed the properties of the Merchants Warehouse Company, the Pennsylvania Warehousing and Safe Deposit Company, the Philadelphia Warehousing & Cold Storage Company, and the Quaker City Cold Storage Company, that is, their buildings, structures, railroad sidetracks and platforms.

I prepared certain statements in which I incorporated much of the information I collected in shape that I can now offer them in evidence.

Mr. Hickey: I will now offer those statements in evidence and I would like to identify each individual statement.

(At this point an informal discussion was had off the record, after which the proceedings were resumed as follows:)

Mr. Hickey: They are now offered for identification, and [fol. 456] I will not identify them any further.

The Witness: The revenues derived by the complainants in the conduct of their warehouse business accrue from the performance of the following services:

1. Handling or transferring freight to or from various railroad cars, and to or from various locations on the several floors of the warehouses, and to or from motor trucks.
2. Separation and distribution of carloads of merchandise into l. c. l. lots.
3. Short term storage.
4. Long term storage.
5. Leasing of warehouse space.
6. Coopering packages.
7. Marking and weighing freight.

The complainants also render incidental services for their patrons consisting of billing goods for outbound transportation, issuing negotiable or non-negotiable warehouse receipts, signing delivery receipts for inbound shipments, accounting for the handling and the distribution, replying by letter or other means to their patrons, the handling, distribution, storage, spot stocks and other services rendered for and in behalf of the patrons.

The following incidental services, dealings between the complainants and the defendant carriers, also are performed by the complainants:

They receive from the defendants a notice of arrival of the inbound loaded cars, and then other action follows: Namely:

The railroad places the cars on the sidings at the warehouses.

[fol. 457] The warehouse companies sign delivery receipt acknowledging receipt of the carload of goods.

They unload the freight from cars to their warehouses.

They release the empty cars to the railroads.

They pay the freight charges on many such shipments to the defendant carriers in the regular course of business.

For outbound shipments the complainants order the railroads to place empty cars for loading such shipments at their warehouses, and the other steps taken are as follows:

The railroad pursuant to the order places the car for loading upon the sidetracks at the warehouses.

The complainants then load the cars there. The complainants prepare the bills of lading and shipping orders and present them to the railroad.

The railroad takes the shipping order and after signing the bill of lading, gives the bill of lading to the complainants.

Sometimes the complainants prepay the freight charges to the railroad.

The railroads company accepts the carload of goods and transports it in accordance with their shipping order.

Where the complainants prepay freight charges on outbound shipments and where they pay the freight charges on inbound shipments, they collect the freight charges and the warehouse charges either from their patrons of from the customers of the patrons.

The source of the information on my Exhibit No. 37 and 37-A to 37-F is the record at each one of these warehouses, [fol. 458] from what I saw being done myself and from statements of the employees of the various warehouse companies.

The Reading Company has issued a printed pamphlet showing lists of private sidings at Philadelphia and the names of the concerns taking deliveries from the private sidings, under date of November 1, 1926, entitled "Circular No. 225," and the Pennsylvania Railroad Company issued such a publication under date of April 26, 1926, entitled "Circular FD No. 199."

I am prepared to describe the delivery of carload freight to one of the concerns named in those publications. I got the information that enables me to do so when I visited the office of this party and also the property on which the siding was located and examined the delivering facilities. I have a copy of a freight bill for one of those shipments, that is, a shipment of lumber. I saw the lumber. The name of that

party is H. B. Wilgus. He has a lumber yard located at 1406 North Delaware Avenue in Philadelphia, served by a private siding, having connection with the railway lines of the Reading Company and the Pennsylvania Railroad Company. Inbound shipments of lumber are placed by those carriers for delivery on that private siding.

The activities of H. B. Wilgus in receiving inbound shipments of lumber are:

After the car is set for delivery on the private siding he unloads the lumber from the car and piles it on the ground in his lumber yard. After the car is set for delivery on the private siding, he unloads the lumber from the car and piles it.

[fol. 459] Mr. Wilgus has a sales office located at 1505 North Delaware Avenue, but I will not describe his office facilities. He has and uses a sidetrack and the ground and facilities in his lumber yard for taking delivery of that carload shipment. He also employs laborers and pays their wages involved in unloading the lumber from the cars and placing it at suitable locations in his lumber yard. He has to bear the cost of the investment—I am testifying as to this particular car; what I saw and know about it.

Mr. Hickey: I offer in evidence the exhibits which have been identified as Nos. 33 to 40 inclusive.

Mr. Glasgow: I desire to enter an objection to 37, 37-A and to and including 37-F. My objection to it is that the effort is to put in the form of an exhibit what, if you will read you will clearly see is the evidence or purported evidence of the witness; not an exhibit at all. For instance, if I may illustrate, Exhibit 37 is headed "Classification of Traffic, Customers and Rate Payers who obtain Warehouse Services at Philadelphia." "This exhibit shows a summation of the information in Exhibits bearing the numbers.

"Traffic: The inbound traffic is of the following classes:

"1. Carload freight"—and so forth.

Examiner Brown: Is it your contention that it is improper to submit testimony in the form of an exhibit?

Mr. Glasgow: It is, sir. The witness is to testify as to facts. He is subject to cross examination and you cannot write out his testimony and put it in in the form of an exhibit.

[fol. 460] Mr. Bikle: Mr. Examiner, I object to exhibits 37 and 37-A to F inclusive, for the same reason that Mr.

Glasgow has stated; that I don't think the material therein contained is proper for exhibit submission.

Examiner Brown: Would you object to the information if it were submitted in the form of testimony?

Mr. Bikle: That is what I was going to say, sir. Personally, I should not object at all if that method were used in this proceeding, except I think the way in which the report is made it is argumentative, and I think that I may perhaps ask Mr. Morgan, without meaning the slightest offense, that this was made after collaboration with Mr. Hickey and with his advice and correction, was it not, Mr. Morgan?

The Witness: He went over it.

Mr. Bikle: And suggested changes?

The Witness: At times, yes sir.

Mr. Bikle: To illustrate what I mean, Mr. Examiner, I am anxious to debate this case with Mr. Hickey on the facts, and I think he is with me, and I don't want any statements to go into the record that are unobjected to by me that I think are susceptible of misconstruction. Now, if you will take Exhibit 37 and take the description of the traffic, it says: "Carload freight, transported at carload rates delivered by the railroads to the warehouse companies and then distributed in less-than-carload lots by the warehouse companies."

Now, from my point of view, as a lawyer in the case, none of that freight is legally delivered to the warehouse com-[fol. 461] panies except the freight that is consigned to them. The other freight is delivered to the consignees who have received it through the agency they have selected, namely, the warehouse company, just as they would receive it if they sent their teamster down to get it for them. In other words, if Mr. Morgan were the consignee of the shipment and he sent his teamster for the freight, Mr. Y, they would not deliver that in legal contemplation to Mr. Y, but Mr. X. As this is presented here, that is susceptible of misconstruction, misinterpretation, and what I am anxious to avoid is that there shall be no intimation on my part that I think that is a correct description. For that reason, I feel constrained to object not only because it seems to me the information is not properly presented in this form,

but because I think in every instance the phraseology is such as to lead to misunderstanding and misconception.

Mr. Woodcock: I object to the exhibits mentioned for the same reasons as those stated by Mr. Bikle on the record.

Examiner Brown: Exhibits 33, 34, 35, 36, 37, 37-A, 37-B, 37-C, 37-D, 37-E, 37-F, 38, 38-A, 38-B, 38-C, 39 and 40 inclusive will be received as Complainants' Exhibits, subject, however, to the objections made of record. Exhibit No. 35 is received with the understanding that contracts of the Baltimore & Ohio Railroad Company and of the Reading Company, similar to those contained in Exhibit No. 1, will be introduced in this proceeding. When introduced, this exhibit will merely be a summary of the warehouses shown in those contracts, and this exhibit is received as supplementary to Exhibit No. 1 and as supplementary to those other exhibits. Exhibits 37 and 37-A to 37-F inclusive, [fol. 462] are received as I have stated, subject to the objections made by counsel. Certain of the information contained in those exhibits is in the nature of argument, but there is also information in the exhibits which I consider proper evidence. Under the circumstances, I would be unwilling to exclude any portion of those exhibits because portions of them are in my opinion pertinent and proper evidence. The witness has not qualified, in my opinion, as an expert, and these exhibits are received with that understanding.

(The documents above mentioned were received in evidence, and marked "Exhibits Nos. 33, 34, 35, 36, 37, 37-A, 37-B, 37-C, 37-D, 37-E, 37-F, 38, 38-A, 38-B, 38-C, 39 and 40, Witness Morgan.")

Cross-examination.

By Mr. Bikle:

Turning to my exhibit No. 37-A, where I state under page one, under Part one, under the designation one: "Carload freight, transported at carload rates, delivered by the railroads to the Warehouse Company and then distributed in less-than-carload lots, by the Warehouse Company," I am not dealing in the legal phase at all. What I mean, is that that carload of freight is taken into the Terminal

Warehouse Company, put on its sidings, and that the goods are taken out of the car by the employees of the Terminal Warehouse Company into the building of the Terminal Warehouse Company.

My phraseology is intended merely to describe that physical situation and it is not intended to indicate that the employees of the Terminal Warehouse Company are acting exclusively for the Warehouse Company or through the Warehouse Company for some one else. It is just a mere statement of physical facts.

[fol. 463] Now, when I say in the paragraph following, No. 2, that, "Carload freight, transported at carload rates, delivered by the railroads to the Warehouse Company and then reshipped in carloads by the Warehouse Company," that No. 2 represents freight that is covered by stuff that went into storage and then later was reshipped in carload lots. This is just a statement of what happened physically. That is a fair statement of all the similar descriptions that appear in these exhibits 37 and 37-A to 37-F inclusive. There are some few minor differences. For example, the Terminal has not got any storage, and this first one has no storage in transit, does not handle any freight stored in transit.

Mr. Hickey: I concede or admit what Mr. Morgan has incorporated in Exhibit 37 and 37-A to F are statements of the physical facts, and he did not intend to interpret any billing of anything having the legal significance that you refer to, in these exhibits.

The Witness: So far as those two matters to which I referred, the handling of the goods from the railroad to the warehouse and from the warehouse to the railroad, in what I have described as reshipments, I am merely describing the physical handling of the goods in the two cases.

Warren T. Justice was thereupon called as a witness on behalf of complainants and having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My name is Warrent T. Justice. I am in the service of the Pennsylvania Warehousing & Safe Deposit Company

[fol. 464] in the capacity of General Superintendent. I have been in the service of that company 25 years. That company is engaged in warehousing and banking in Philadelphia and has been since 1872. Its general office is located at 111 South Third Street, Philadelphia. The location of its several warehouses are, 23rd above Race; 16th and Gallahand; Richmond and Cambria; and a group known as the Delaware Avenue Stores, reaching from Delaware Avenue and Pine to Delaware Avenue and Catherine, and Delaware Avenue and Poplar Streets.

The location of each of the buildings, of the structures, included in that is: Delaware Avenue Stores Nos. 1, 2, 3 and 4; Pennsylvania Stores; Pennsylvania Tobacco Stores; Moro-Phillip Stores; Atlantic Stores; and West Indies Stores.

Nos. 1, 2, 3 and 4, have private sidings connecting with the Philadelphia Belt Line; or, the Reading and B. & O. through the Philadelphia Belt Line and Pennsylvania Railroad. This tobacco warehouse is not equipped with a private siding.

Inbound shipments handled at the tobacco warehouse are delivered through the tracks into the Delaware Avenue Stores Nos. 1, 2, 3 and 4.

We get the goods from those cars over to the tobacco warehouse sometimes by motor trucks and sometimes hand trucks. The distance is about 75 feet. The cars that we want to truck across the street are placed in the nearest position. The nearest we can get is approximately 75 feet. The longest would be 200 feet, approximately. When it is 200 feet, it is trucked, sometimes by motor truck, sometimes by hand truck.

The range of distance is 75 to 300 feet from this warehouse.

[fol. 465] We get allowance on traffic handled through this warehouse from the Baltimore & Ohio and Reading Company.

The West Indies stores are not served by private sidings.

Delivery of inbound freight which goes into the West Indies stores is made by the Moro-Phillips Stores track. Those tracks are about 300 feet away from the West Indies Stores.

Motor trucks are usually used in getting the freight be-

tween the West Indies Stores and the railroad cars. We get allowances on that freight.

The Pennsylvania Stores are not served by private sidetracks. Trucking service is involved there the same as the tobacco stores. They are on the opposite street, and they are the same as the tobacco stores. The range of trucking is 75 to 300 feet.

The Pennsylvania Stores has no private siding or sidetract facilities. Freight to and from the Pennsylvania Stores reaches that warehouse through tracks of the Delaware Avenue Stores. That is, they are placed on those tracks and hauled by motor or hand truck over to the Pennsylvania Stores.

At the Atlantic Stores the merchandise is placed on truck from the Moro Phillips Stores, and trucked by motor truck.

The Tobacco Warehouse, the West India Stores, the Pennsylvania Stores and the Atlantic Stores are all known as part of the Delaware Avenue group.

This freight is not trucked from public delivery tracks to any of these stores instead of the private siding from some other warehouse of the Pennsylvania Warehousing and Safe Deposit Company to my knowledge.

[fol. 466] Such trucking from the Almond Street yards of the Reading Company to any one of these four warehouses has been performed, but not in a long period of time, I should say possibly a year.

Up to about one year ago this freight on which we got an allowance was, in fact, trucked from public delivery tracks to Moro Phillips Stores, Atlantic, West India, Pennsylvania and the Pennsylvania Tobacco Stores. Freight inbound or outbound from these four warehouses, not having direct track connections, also has been motor-trucked to or from public delivery tracks on the Reading Company at Delaware Avenue, outbound that is continued yet today; inbound possibly a year.

The major portion of our inbound tonnage is received from the Reading and Baltimore & Ohio.

A great majority of our tonnage is interstate traffic. We receive allowances on that freight from the Reading and on the B. & O. We receive allowances from the Baltimore & Ohio on both inbound and outbound freight. On the Reading we receive allowances only on the inbound freight.

We ship freight from our various warehouses outbound over the Reading. We do not receive any allowances on the outbound freight.

There is no difference in service that we pefform on the outbound freight that goes out over the Reading Company and the outbound freight over the Baltimore & Ohio.

There are a good many different rates of allowances on the Reading. The rates of allowance given by the Reading Company to the Pennsylvania Warehousing and Safe Deposit Company on inbound traffic are thirty cents per ton on merchandise, with the exception of newsprint paper, which is 15 cents per ton.

The allowance on flour is thirty cents.

[fol. 467] No allowances are given by the Reading Company to the Pennsylvania Warehousing and Safe Deposit Company on outbound traffic.

The rates of allowances given by the Baltimore & Ohio Railroad to the Pennsylvania Warehousing and Safe Deposit Company on inbound traffic are fifty cents per ton on all kinds of traffic. The rates of allowance given by the Baltimore & Ohio Railroad to our Warehouse Company on outbound traffic are fifty cents per ton—it is fifty cents on flour. All kinds of general merchandise and package freight are handled at our warehouses.

I recognize this copy of a trade journal entitled Distribution and Warehousing. I find at page 156 of that publication an advertisement of the Pennsylvania Warehousing and Safe Deposit Company. That was put in in the regular course of business.

Mr. MacGregor is Assistant General Superintendent of the Pennsylvania Warehousing and Safe Deposit Company.

(The witness then identified the signatures of Mr. MacGregor or himself to the letters offered as exhibits 42 to 47 inclusive.)

Referring to Exhibit marked No. 48, and to the names of the Eagle-Picher Lead Company, that appears on that exhibit, the Eagle-Picher Lead Company is one of the customers of the Pennsylvania Warehousing and Safe Deposit Company.

As to whether the other names of firms appearing on that exhibit are also customers of the Pennsylvania Warehousing and Safe Deposit Company, the West Virginia Pulp &

Paper Company are not. Mapl-Flake Mills, Inc., are not. I believe the rest are.

The West Virginia Pulp & Paper Company was at one [fol. 468] time a customer of the Pennsylvania Warehousing and Safe Deposit Company. Mapl-Flake Mills, Inc., was a customer of the Pennsylvania Warehousing and Safe Deposit Company.

I will describe the service performed by our warehouse company for the Eagle-Picher Lead Company:

The cars of lead are placed at our warehouse and unloaded by us; part of it is put in their rented space and part of it is put in open warehouse space. And the part put in open warehouse space is delivered on their order to their teams and taken away in truck loads.

Q. What service does your warehouse perform for the Post Products Company?

A. Unloads the cars—the cars are placed and unloaded in the warehouse; delivered to the trucks or loaded in freight cars on their instructions. When loaded in freight cars, that is for outbound shipments in l. c. l. lots. We receive orders by United States mail, sometimes by telephine, followed by mail, that enables us to make these deliveries or distribution under the contracts.

If you went down this list and asked me the same questions about the other concerns appearing on Exhibit No. 48, my testimony would be of the same character as to delivery or distribution of the freight for those concerns, as my testimony has been for the Post Products Company.

(The exhibits referred to were thereupon offered and received in evidence, marked "Complainants' Exhibits 41 to 48, inclusive, Witness Justice.")

Examiner Brown: In Exhibit 48 it appears that the [fol. 469] points of shipment have not been proved as to being correct for these concerns; so, this exhibit will be received subject to testimony of this witness with respect to points of shipment on this exhibit.

Cross-examination.

By Mr. Stilwell:

Looking at the first page of Exhibit 48 I will say goods from the Coca Cola Company inbound are received by

motor truck. None of these goods is received from the railroads. We do not get any allowance in connection with any products received from the Coca Cola Company.

With respect to the California Packing Company the same thing is true there. Their goods are received by motor truck. They do not come in to us over the railroad.

From some concerns named on that list we receive the freight both by truck and by railroad. There are some that we receive both ways—by truck and by railroad.

On shipments to the Pennsylvania Warehousing and Safe Deposit Company, or in their care, there appears upon the bill of lading, "Care of Pennsylvania Warehousing and Safe Deposit Company," destined to a particular store. The stores designated on these bills of lading are: Delaware Avenue Stores; 16th Street Stores; 23rd Street Stores; Port Richmond Stores; Poplar Street Stores and Moro Phillips Stores. None is ever addressed to the Tobacco Warehouse or the West India Stores, the Pennsylvania Stores or Atlantic Stores. All those stores are separate buildings. They are operated as part of our Delaware Avenue Stores, or as part of our Moro Phillips Stores.

All freight received by us that is at any time placed in [fol. 470] any of the stores I have mentioned, is unloaded at the Delaware Avenue Stores or the Moro Phillips Stores and the address on that bill of lading always specifies in those cases either the Moro Phillips Stores or the Delaware Avenue Stores.

In the so-called Tobacco Warehouse we store imported tobacco. It goes in under United States customs bond. We unload that at the Delaware Avenue Stores and then truck it across Water Street and put it in our tobacco stores under the instructions of the Government inspector.

The Tobacco Stores is a specially constructed building. It is a humidor. It is almost air proof; very few windows which are sealed with shutters and has to be kept absolutely dark, and the humidity has to be kept at a certain degree to preserve this imported tobacco.

When we receive merchandise at the Delaware Avenue Stores, which, according to instructions we have received, is to be delivered or reshipped within 48 hours, we do not transfer any such merchandise to these other buildings other than the tobacco warehouse.

Any merchandise which we transfer from the Delaware Avenue or the Moro Phillips Stores, as the case may be, to some other building, is after 48 hours after arrival with the exception of the tobacco. And except that it is a commodity that we think is going to stay in after the 48 hours, we will truck it before the 48 hours are up; but if we think it is to be taken away, we leave it there.

Where we have received instructions before the time of the arrival of the freight we leave it there. Whenever we move it we believe it is going to be in our storage for a considerable period of time.

[fol. 471] The reason for having the buildings known as Delaware Avenue Stores Nos. 1, 2, 3 and 4; Tobacco Warehouse; West India; Pennsylvania Stores; and Atlantic Stores is principally for the convenience of directing our patrons to them and identifying them for insurance purposes.

These buildings carry different insurance rates.

When I say identifying them to our patrons, I mean telling our patrons where to bring their trucks—where to bring their trucks or the truck driver where to go. They all operate as an operating unit.

In answer to Mr. Hickey's question, I stated that we unloaded these shipments for the customers which he named in his questions; that is not a correct statement. We unload them for the carrier.

Redirect examination.

By Mr. Hickey:

This Atlantic Stores bears the name Atlantic Stores and has ever since I went in the service of the Warehouse Company, and this Pennsylvania Stores bears the name of Pennsylvania Stores and has ever since I have been in the service of the company, and this West India Stores also bears that name and has ever since I have been in the service of the company.

The Tobacco Warehouse has been called the Tobacco Warehouse ever since it was built.

When freight was unloaded from cars on the public delivery tracks and trucked to the Atlantic Stores, it was unloaded directly from the railroad cars on the motor truck, and the motor truck moved directly from the cars to the

Atlantic Stores—and the same is true of the Pennsylvania Stores, the West India Stores and the Tobacco Warehouse. [fol. 472] The checkers or laborers handling freight worked jointly at the Atlantic Stores with the Moro Phillips Stores. They go from one warehouse to another, wherever there is work to be done. They are all under the supervision of one superintendent—the Moro Phillips, Atlantic and West India.

The Pennsylvania Warehousing and Safe Deposit Company operates twenty-two warehouses.

Our Port Richmond Stores and our Poplar Street Stores are not under joint operation. They are all under the supervision of the president of the company. They have their separate office organization, separate foremen and separate laborers. The significance of this claim that there is joint operation of this Delaware Avenue group of stores is that the Delaware Avenue Stores, Pennsylvania Stores and Tobacco Stores are all right within two city block all together; have the one office force; one gang of laborers; and one foreman. They all come under the one office.

Recross-examination.

By Mr. Stilwell:

To the shippers throughout the country these groups are known as the Delaware Avenue Stores and to our local trade and insurance brokers they are known by the respective names and are operated as a group—they are separated only by an alley or street.

When I say we operate twenty-two stores, I include in our 16th street stores several buildings and in our 23rd street stores several buildings.

By Mr. Woodcock:

I spoke of certain shipments which we handled from the [fol. 473] Delaware Avenue team track to our stores. It has been about a year since we handled any shipments from that track. There were peculiar circumstances that required the handling of shipments from that track rather than our siding. Frequently it was on account of shifting service.

We were delayed with shifting, and we would go ahead and unload from the team track.

We would be waiting in the warehouse for cars to be placed on our private siding when the cars would be on the team track or on the tracks outside, and we would know they would have to be trucked anyway, and we would go ahead and truck them before they were actually placed. It was done for the purpose of our own convenience.

JACOB A. GEISZ was thereupon called as a witness on behalf of the complainants, and, having been first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

My Name is Jacob A. Geisz. I am president of the Philadelphia Warehousing and Cold Storage Company. That warehouse company is engaged principally in the cold storage business. Its general office is at Delaware Avenue and Noble Street, Philadelphia. It operates three houses located at 501 to 518 Beach Street, 512 to 526 Beach Street, in Philadelphia. They have tracks entering the building in both locations connecting with the Reading Company. The major portion of our freight is principally inbound and transported by the Reading Company. It is largely interstate traffic.

We receive allowances from the Reading Company. The [fol. 474] rate of the allowance is fifty cents per ton on dairy products or other perishable goods requiring cold storage. The dairy products are butter, eggs, cheese and poultry. The other goods we receive are meats, fruits, dry and green. We handle only those goods on which we are entitled to allowance.

The aggregates of the allowances paid in recent years were:

For the fiscal year ending March 31, 1926, the Reading Company paid the Philadelphia Warehousing & Cold Storage Company $19,729.39.

For the fiscal year of the storage company, period end-

ing March 31, 1927, the Reading Company paid the storage company $21,908.18.

For the fiscal year of the storage company, period ending March 31, 1928, the Reading Company paid the storage company $20,992.42.

Mr. Hickey also asked, I think, information as to the exact number of cars from April, 1926, to March, 1928. They amount to 7,379.

I might say further that the storage company handles on an average of 3,600 cars every year. Our traffic is largely inbound—very little outbound. About 99 per cent of our traffic is dairy products. 80 per cent of the dairy products are removed from our warehouse within the free time.

I will briefly describe the service we perform on these inbound shipments:

We are furnished a list by the Railroad Company each day of the cars that we are to unload, and when we receive these cars we get in touch immediately with the consignees and notify them by phone and follow that message by the delivery of the freight and delivery notice.

We do not distribute the freight except in one case; we notify the different parties who are to get the goods and the [fol. 475] parties call at the warehouse and we get a receipt for the commodities.

The one exception, the name of that party is the De Sota Creamery Company. They are inbound shipments of butter, and of course, that is a car load shipment. We deliver it to different parties who make up the respective orders. Then several parties may call and each of those parties get a car load of butter of the De Sota Creamery Company, for which we make a charge of $5 a car.

[fol. 476] Our business is purely warehousing and not distribution.

Q. Do I understand that each carload of butter or each carload of eggs that goes into your warehouse, you deliver that lot of freight intact to one person?

A. That has never been done since I have been in the business.

Q. Instead of delivering these dairy products to one person you deliver them to several persons, is that true, when they call for them with orders from the owners of the freight?

A. We honor the orders as they call for them. It might be a truck load or it might be 5 cars of eggs; it might be 10 tubs or 10 firkins of butter. Whatever they call for and have written orders from the owner, we honor the order and give them the quantity of goods called for in the order.

Mr. Hickey: If the Examiner please, I have three exhibits here (producing same).

Mr. Connelly: Which we admit to be correct as far as the Philadelphia Warehousing & Cold Storage Company is concerned.

Mr. Hickey: We offer these three in evidence.

Examiner Brown: Any objection? From what source was Exhibit No. 49 taken?

Mr. Hickey: Exhibit 49 is reproduced from a publication of the Philadelphia & Reading Railway Athletic Association, an annual publication for the year 1927.

[fol. 477] Examiner Brown: These exhibits will be received.

(The exhibits referred to were thereupon received in evidence marked Complainants' Exhibits 49, 50 and 51, Witness Geisz.)

Cross-examination.

By Mr. Connolly:

I said our terminal charge is 50 cents per ton on dairy products and 30 cents per ton on general merchandise.

(Witness excused.)

COLLOQUY

Mr. Hickey: If the Examiner please, the remaining evidence I desire to offer is documentary evidence which I believe I can get in with the help of counsel and stipulation of counsel.

Mr. Webber: That is correct as far as I am concerned.

Mr. Woodcock: All right, so far as the Reading is concerned.

Mr. Hickey: I offer a statement of bills of the Pennsylvania Warehousing and Safe Deposit Company for allow-

ance under consideration in this case which has been reproduced from the records of the Baltimore & Ohio Railroad Company.

Examiner Brown: That will be Exhibit No. 52.

(The statement referred to was thereupon received in evidence, marked "Complainants' Exhibit 52, Counsel Hickey".)

[fol. 478] Mr. Hickey: Now, Mr. Webber, have you produced some of the way bills which I called for?

Mr. Webber: I have, sir. I haven't those in the form for exhibits, but I have them so that you can see them. (Producing same.)

Mr. Hickey: We will not offer these in exhibit form. I would like to stipulate with Mr. Webber that the way bills which he has produced contain columns under the heading "Consignee. Address, (Final destination, and Additional Routing)."

Examiner Brown: You make that stipulation, Mr. Webber?

Mr. Webber: Yes, sir.

Mr. Hickey: And that the character of billing shown by the various way bills that Mr. Webber has produced is the name of some person under that column followed by the inscription "Care of the Pennsylvania Warehousing and Safe Deposit Company" or an abbreviation of that name?

Mr. Webber: That is right, sir.

Mr. Hickey: I now desire to stipulate in the record some documentary evidence produced from the files of the Reading Company. First, the contracts or agreements between the Reading Company and the Pennsylvania Warehousing and Safe Deposit Company?

Mr. Woodcock: There are four contracts with certain letters or copies of letters attached thereto. I also have photostatic copies, which I have produced in answer to Mr. Hickey's request.

The first contract is dated January 12, 1897, between the Philadelphia & Reading Railway Company and the Pennsylvania Warehousing and Safe Deposit Company. (Producing same.)

Examiner Brown: That will be identified as Exhibit 53.

[fol. 479] (The agreement referred to was thereupon marked "Complainants' Exhibit 53, Counsel Woodcock" for identification.)

Mr. Woodcock: Also agreement between the Philadelphia and Reading Railway Company and the Pennsylvania Warehousing and Safe Deposit Company, dated December 12, 1901. (Producing same)

Examiner Brown: That will be identified as Exhibit No. 54.

(The exhibit referred to was thereupon marked "Complainants' Exhibit 54, Witness Counsel Woodcock" for identification.)

Mr. Woodcock: And also agreement dated January 2, 1902, between the Philadelphia & Reading Railway Company and the Pennsylvania Warehousing and Safe Deposit Company.

Examiner Brown: Identified as Exhibit No. 55.

(The agreement referred to was thereupon marked for identification "Complainants' Exhibit 55, Counsel Woodcock".)

Mr. Woodcock: Also agreement dated January 25, 1905, between the Philadelphia and Reading Company and the Pennsylvania Warehousing and Safe Deposit Company, which agreement is a modification of the agreement introduced dated January 2, 1902. (Producing same)

Examiner Brown: That will be marked Exhibit 56.

(The supplemental agreement referred to was thereupon marked "Complainants' Exhibit 56, Counsel Woodcock" for identification.)

Mr. Woodcock: Also agreement dated November 4, 1898, between the Philadelphia & Reading Railroad Company and the Philadelphia Warehousing and Cold Storage Company, to which there is attached a supplemental agreement, dated April 20, 1909, between the same parties (producing same).

[fol. 480] Examiner Brown: That will be identified as Exhibit No. 57.

(The agreement referred to was thereupon marked for identification "Complainants' Exhibit 57, Counsel Woodcock".)

Mr. Woodcock: Now, to all these agreements, as I stated before, there are certain letters attached.

Examiner Brown: That is understood.

Mr. Woodcock: I also wish to stipulate if Mr. Hickey is agreeable to it, that the Reading Company has succeeded to the rights of the Philadelphia & Reading Railway Company under all of these agreements. The Philadelphia & Reading Railway Company having been merged with and became a part of the Reading Company since January 1, 1924, the thing I wish to stipulate is that the Reading Company has succeeded to the rights and obligations of the Philadelphia & Reading Railway Company under these agreements.

Mr. Hickey: I agree with that.

Counsel for the Reading Company has, in response to my request, passed to me, a bill of the Pennsylvania Warehousing and Safe Deposit Company, presented to the Reading Company under date of May 29, 1926, for the allowances under consideration in this case. It bears the number 33,575. I will read what appears upon that bill:

"To tonnage due at the Port Richmond Stores for the month of May, 1926"

The inscription which I read was from one bill of the Warehousing Company for one of its warehouses, and I would like to stipulate with counsel that it is typical of all bills of the warehousing company for the allowance claimed at all of its warehouses.

[fol. 481] Examiner Brown: You are referring to the Reading Company now?

Mr. Hickey: Yes, sir.

Examiner Brown: Is that satisfactory to you, Mr. Woodcock?

Mr. Woodcock: I agree that the description read by Mr. Hickey is typical of that in the bills covering such claims which are presented by the Pennsylvania Warehousing and Safe Deposit Company.

Examiner Brown: The stipulation will stand as stated.

Mr. Hickey: I also would like to stipulate with counsel for the Reading Company the description of the allowances as claimed by the Philadelphia Warehousing and Cold Storage Company, from the Reading Company.

For that purpose I have before me a bill of that Ware-

housing Company, for the week ending May 1, 1926. I will read from that bill as follows:

"Deliveries made for week ending May 1, 1926."

I would like to stipulate with counsel for the Reading Company that that is typical of other bills for allowances presented by that Warehousing Company to the Reading Company.

Mr. Woodcock: I agree that the words read by Mr. Hickey are contained in the standard form of bill which is presented to the Reading Company by the Philadelphia Warehousing and Cold Storage Company for allowances, so-called, under its contract.

Examiner Brown: The stipulation will stand.

Mr. Hickey: In my letter of July 21, 1928, addressed to Mr. W. L. Kinter, General Solicitor Reading Company, I asked for the production of certain revenue way bills. Counsel for the Company has certain of these revenue way [fol. 482] bills, and they are before us now.

I now ask Mr. Woodcock, whether he has such way bills before him?

Mr. Woodcock: I have 501 way bills, which are the way bills covering the shipments referred to in Mr. Hickey's letter, and I find in these way bills that one general form of billing was used, that is, under the printed caption appearing on each of the way bills, reading:

"Consignee; address; (final destination and additional routing") appears the name of some party other than the Warehousing Company followed by the words, "Care of Pennsylvania Warehousing and Safe Deposit Company" and followed by the name of some particular store of that company, such as the 16th Street Stores and the address of that particular store.

In some cases the words "Pennsylvania Warehousing and Safe Deposit Company are abbreviated; but the words "Care of" appear in all of the 501 way bills which I have produced in answer to Mr. Hickey's call.

Mr. Hickey: I agree that counsel has correctly stated the writings that appear on these bills.

Examiner Brown: The stipulation will stand.

Mr. Hickey: Will counsel for the Reading Company state the total amount of the allowances given by the Reading

Company by the Pennsylvania Warehousing and Safe Deposit Company during one or two recent years?

Mr. Woodcock: I am advised by a representative of our Comptroller's Office, who is present, that the total amount of payments made under the contracts in question to the Pennsylvania Warehousing and Safe Deposit Company by the Reading Company for the year ending April 30, 1927, amount to $31,386.32; and that such payments for the year [fol. 483] ending April 30, 1928, amounted to $27,909.78.

Mr. Hickey: If the Examiner please, I would like to have stipulated for the record, without calling for witnesses, the correctness of that statement?

Examiner Brown: It is considered as part of the evidence in this proceeding, without objection, as an admission of counsel.

Mr. Hickey: That concludes the stipulation with the Reading Company. I now return to the Baltimore & Ohio matter.

I will endeavor to stipulate in the record a description of the allowances as claimed by the Pennsylvania Warehousing and Safe Deposit Company from the Baltimore and Ohio Railroad Company.

I have before me such a statement produced by counsel of the Baltimore & Ohio.

It is a bill of the Pennsylvania Warehousing and Safe Deposit Company, presented to the Baltimore & Ohio Railroad Company, bearing date of May 10, 1928, and I will read the following therefrom:

"To tonnage due at the Delaware Avenue Stores for the month of April, 1928."

I would like to have counsel for the Baltimore and Ohio state if that is typical of the description of the allowances as claimed by the Warehouse Company in its various bills throughout the past two years?

Mr. Webber: My examination of the records, which I have obtained from the Accounting Department, shows that this is typical of the bills presented to the Baltimore and Ohio Railroad by the Pennsylvania Warehousing and Safe Deposit Company.

Examiner Brown: It will be considered as a part of this record.

[fol. 484] (The exhibits referred to, heretofore marked for identification, were thereupon received in evidence, marked "Complainants' Exhibits 52 to 57 inclusive".)

Examiner Brown: You have no further evidence at this time, Mr. Hickey?

Mr. Hickey: No. Complainants rest.

Examiner Brown: Normally, the defendants would be expected to put their case in at this time, but discussions off the record were had to the effect that an adjournment is necessary in this case.

I understand that Mr. Hickey and the various counsel here present have agreed that the case may be adjourned until October 8, 1928.

Examiner Brown: There being nothing further at this time, the hearing will stand adjourned until October 8, 1928, at 10 o'clock a. m.

Thereupon, at 3:55 p. m. on August 1, 1928 the hearing was adjourned.

Philadelphia, Pa.,

October 8, 1928—10:00 o'clock a. m.

Before R. M. Brown, Examiner.

Met pursuant to notice.

Mr. Bikle: Before calling the witness, I should like to move that the Commission rescind its order of September 17, 1928, permitting intervention on behalf of the Millers National Federation. That intervention was granted, as is customary with the Commission, ex parte. The testimony introduced at the prior hearing disclosed, I think, the in-
[fol. 485] terest of the intervener in the case—that is, that intervener in the case, and I do not think it is relevant to the issues.

Mr. Campbell: I make a formal objection.

Mr. Glasgow: On behalf of the interveners I make the same motion as Mr. Bikle.

Mr. Woodcock: I make a similar objection to the allowance of the petition in Sub No. 2.

Mr. Barnes: And the same on behalf of the intervener, Pennsylvania Warehousing & Safe Deposit Company.

Mr. Webber: Same for the Baltimore & Ohio Railroad Company.

Mr. Campbell: On behalf of the intervener I oppose that motion. Exam. Brown: Inasmuch as that petition has been received and allowed by the Interstate Commerce Commission, and inasmuch as it is understood that this petition will not unduly broaden the issues, I will make no ruling on it at this time. The ruling with respect to this petition will be made in the final analysis by the Commission.

EDMUND FUNCK was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Bikle:

I am assistant general freight agent of the Pennsylvania Railroad Company. I have been connected with the traffic department of the company for 28 years. My present duties are specifically the handling of complaints before the Interstate Commerce Commission, both formal and informal, and also before the various state commissions, as well as various matters relating to rate adjustments.

[fol. 486] I have been assistant general freight agent for a year and a half, but I have been in that line of work since 1916.

I have prepared a map (Exhibit 58) showing the city of Philadelphia, for the purpose of indicating on it the location of the stations of the Pennsylvania Railroad Company, including, as we think, the warehouses that have been the subject of discussion in this proceeding. The map as printed, is a map of the city of Philadelphia, prepared by the Pennsylvania Railroad, for our own use in various matters, and it is, I think, an accurate map of the city. Then under my direction I had placed on this map, by letters in circles, the location of certain Pennsylvania Railroad operated freight stations; then following, locations of those warehouses with which we have the agreements that are already in evidence in exhibit 1.

When I hereafter use the phrase "contract warehouses," I have in mind warehouses with which there are contracts, now in evidence.

Examiner Brown: As I understand exhibit No. 58, it is merely for convenient reference.

Mr. Bikle: That is what you asked us to give you, Mr. Examiner, a map showing the location of these points.

The Witness: Just for clarity, the contract warehouses are those designated by the numerals 1 to 11, and the complainant warehouses by numerals 12 to 15, inclusive, in a circle. These contract warehouses that I have referred to, as indicated by the circles 1 to 11, inclusive, are in relation with the Pennsylvania Railroad Company, by virtue of the [fol. 487] contracts that are already admitted as exhibit 1.

The contract (exhibit 1) which is marked in pencil 1 and 2, covers the warehouse designated on the map, 1 and 2 being River Front Stores, and Webb Terminal.

I have put on the various contracts that are bound together as exhibit 1, pencil notations that correspond with these red numerals in circles here so that it is only necessary to say that they have already been identified in that fashion to tie up with the notations on this map.

The contract dated the 25th of January, 1917, covers River Front Stores and Webb Warehouse, which are designated as Nos. 1 and 2, on exhibit No. 58.

The contract dated the 28th day of July, 1927, covers Franklin Warehouse, designated circle 3 on exhibit 58.

The contract dated 10th day of April, 1922, covers Bainbridge Warehouse, designated as circle 4 on exhibit 58.

The contract dated 4th day of March, 1925, covers Kenilworth Warehouse, designated circle 5 on exhibit 58.

The expired contract, dated 3rd day of July, 1918, covers Federal Warehouse, being designated circle 6.

The contract dated 1st day of July, 1916, covers Shackamaxon Warehouse, being designated circle 7.

The contract dated 1st day of July, 1916, covers Kensington Warehouse, being designated circle 8.

The contract dated 1st day of July, 1916, covers 15th and Carpenter, being designated circle 9.

[fol. 488] The contract dated 1st day of July, 1916, covers 31st and Chestnut Streets, being designated circle 10.

The set of letters commencing with 1, dated September 8, 1922, signed Quaker City Cold Storage Company, Horace

P. Searle, President, cover Quaker City Cold Storage Company, being designated No. 11 on the exhibit.

With respect to No. 10, all sorts of general merchandise is delivered at these warehouses.

However, with respect to Shackamaxon and Kensington, they handle flour in considerable quantities, and that is also true with respect to 31st and Chestnut Streets.

We have no contracts with the warehouse under the heads of 12, 13, 14 and 15. They are complainants in this case.

At 31st and Chestnut Streets, there is also handled a considerable quantity of hay. None of these warehouses handle household goods or second-hand furniture. The best designation is that they handle general merchandise.

The warehouse of the Quacker City Cold Storage Company, designated circle 11, handles various commodities which require cold storage. For example, they handle dressed poultry, meats, citrus fruits, certain kinds of fresh vegetables, certain kinds of groceries, certain kinds of vegetable oils, buttermilk in barrels, frozen fish, butter and cheese and in general commodities which require refrigeration. Those are the only special situations that it is necessary to describe, in my judgment.

The Pennsylvania Railroad Company has a so-called station tariff. The current tariff is G. O. I. C. C. 14700. I [fol. 489] have prepared an exhibit showing excerpts from that tariff, relating to these warehouses, designated 1 to 11, which is embodied in exhibit 59. Just for clarity, sheet 4 of that exhibit covers the current situation. The preceding sheets are entirely historical.

I have also prepared an exhibit, showing excerpts from our tariff No. 14322, relating to storage rules, which is No. 60. I have included that because of reference to these warehouses.

The general arrangement with respect to the loading and unloading of caroad freight, carried at carload rates on the railroads of this country is that the consignee or owner shall load or unload. That rule has already been incorporated in the record in one of Mr. Hickey's exhibits—No. 33. There are various exceptions to that rule.

I have prepared an exhibit, showing an excerpt from the Pennsylvania Railroad tariff containing exceptions to the

Official Classification, and particularly to Rule 27, as applicable to Philadelphia (Exhibit 61).

I have prepared an exhibit showing the history of the allowances that are paid to warehouse companies designated 1 to 11—that is my exhibit No. 62. It shows an increase in the allowance to some of the older warehouses with which we had contracts prior to 1925. I think it is necessary to refer to the exhibit in order that this may be clearly understood.

By reference to the exhibit (62), it will be noted that in the first group of warehouses and the allowances shown, the allowances are either 40 or 35 cents per ton respectively. The allowance originally was 40, and in many cases the contracts provided that after a certain period of time, [fol. 490] there would be a reduction to 35 cents.

Just at this point I may say I am speaking of merchandise freight, because the allowance with respect to flour in barrels has not changed.

Now taking page 1 of the exhibit, and taking the very first group of warehouses covering River Front stores, it will be seen that the allowance is 40 cents.

In the Kensington district, second group, 35 cents.

15th and Carpenter, 35 cents.

Delaware Avenue, Walnut-Chestnut Street, 40 cents, and then there was an addition, effective January 1, 1917, Federal Street, at 35 cents.

Now in the next group, at the bottom of the page, it will be seen that the group covering Delaware Avenue, Water, Chestnut and Walnut Streets, the River Front Stores group was increased to 50 cents per ton.

Then turning over to page 2, it will be seen at the top of the page, covering the first group, and specifically Kensington and Shackamaxon warehouses, that effective on the same date, namely, June 23, 1919, the allowance was made 50 cents per ton, and similarly with regard to 15th and Carpenter Streets, the amount was made 50 cents per ton.

That is the increase that I desire particularly to explain. As I have already stated, the allowance at these warehouses was generally 35 cents per ton. The Merchants Warehouse Company took up with our company the question of having the allowance increased, and our vice president declined to grant that increase.

Mr. George D. Dixon was then vice president. The president of the Merchants Warehouse Company thereupon said [fol. 491] that for the time being he would let the matter rest, although he contended it cost him much more to handle the traffic than the allowance he was receiving.

As I have stated, and as shown by the exhibit, the original allowance continued until June 22, 1919, inclusive, but on that date, it was advanced to 50 cents, and the reasons for the conditions covering that advance are shown by the correspondence which has been filed as exhibit No. 63.

At the time of that advance the Pennsylvania Railroad Company was being operated by the Director General. The advance was required by Mr. O. H. Markham, the Regional Director of the Allegheny Region, in which the Pennsylvania Railroad at that time was located.

The officer in the Railroad Administration at that time who had immediate contact with this problem at Broad Street was Mr. Charles R. Capps. I know him personally. I was employed by him. He had no prior connection with the Pennsylvania Railroad Company before the Railroad Administration—he has had none since.

He was sent to Broad Street to have charge of the traffic of the Allegheny Region.

Mr. Hickey: If the Examiner please, if we are going into this thing in detail, I am going to insist on there being produced here the things that were laid before Mr. Capps and Mr. Markham that brought these stereotyped letters here.

Examiner Brown: The opinion of the Examiner is that this testimony, while relevant, is not particularly important.

Mr. Bikle: That is the way I think, Mr. Examiner, but what we did want you to be cognizant of was that the in- [fol. 492] crease made in 1919 was made by high officials of railroads that had no prior relation with this situation.

Mr. Hickey: That is the very thing I object to, if the Examiner please, the treating of that Railroad Administration as an instrumentality of the United States Government, and we all know perfectly well what the Railroad Administration was; that the government had to take and organize the Railroad Administration out of these railroad officials, and that in these cases, time and time again, the tongues of the Railroad Administration were portrayed as the tongues of the United States Government, while in fact they were just the tongues of this Railroad Adminis-

tration. We all know what they were and how it was done.

Examiner Brown: I am going to let this evidence in for what it is worth, and subject to the remarks of counsel.

Proceed.

The Witness: Mr. Markham, whose name is shown on one of these letters, had no relation whatever to the Pennsylvania Railroad Company prior to Federal control and has had none since. He is the gentleman who was president of the Illinois Central Railroad Company.

Exhibit 64 relates to the same general matter. It was somewhat misunderstood this morning, in being enumerated—what is called the Freight Rate Authority, which was issued by the United States Railroad Administration during the period of Federal control, was the authority under which the Pennsylvania Railroad published its tariff, showing the increase.

Mr. Campbell was an official of the Pennsylvania Railroad Company at no time. He is the present vice presi-[fol. 493] dent of the New Haven, in charge of traffic.

Reverting to the exception to the classification which is shown on my exhibit 61, the Pennsylvania Railroad Company in Philadelphia, at some of the stations operated with its own immediate employes, unloads carload freight. I have made an investigation to enable me to give some idea of the extent to which that kind of unloading is performed. Confining myself, of course, to the stations involved in this exception to the classification, and to package freight, I had an investigation made for the period of the week of June 25th to June 30, 1928, inclusive. That week was selected for no particular reason. It was immediately in advance of the hearing in July, and I took the current week, in order that the data might readily be procured, and the situation with respect to the traffic unloaded at these stations, or loaded by the Pennsylvania Railroad Company, is as follows, in cars:

At Dock Street, inbound, 24 cars unloaded; outbound, 10 loaded.

Walnut Street, inbound, 50 unloaded; outbound, two loaded.

At Federal Street, inbound none and outbound, 3.

At Shackamaxon station, inbound none; outbound, two.

At Kensington, inbound two; outbound, 11.

At North Philadelphia, none.

At Broad Street and Washington Avenue, inbound none; outbound 12.

At Vine Street, inbound six; outbound five.

At 30th and Market Streets, none in either direction.

Ontario Street, none in either direction.

Fair Hill, inbound none; outbound, three.

[fol. 494] I think that is typical of the situation at those stations. The week was just a normal week, and the results would perhaps be the same at any other time.

I have made an effort to ascertain what was the occasion for the railroad assuming this work of loading and unloading certain carload freight at Philadelphia. I have not, from any records, been able to get complete information, but I have ascertained some facts as the basis for conclusions. I think perhaps it might be well to know the source of my information. There are, as I have already stated, no written records on the subject, but I have discussed the matter with a number of our older employes, with one who was our division freight agent at Philadelphia about 30 years ago, and who is now pensioned, and with our pensioned vice president, Mr. George D. Dixon, who was located in Philadelphia at about the time we assumed this practice started.

In order that it may be understood, I should like to point out, first of all, that we have in Philadelphia, two stations, namely Dock Street and Walnut Street wharf at which we have no team track delivery.

Walnut Street wharf, as its name implies, is a pier station, and traffic to and from that station is floated by car float from our Camden terminal.

Dock Street is just across the street from Walnut Street wharf, and we might designate it an inland station, there being no team track there. The station is, however, reached by a track which enters the station building from the south side.

Now I think it will be obvious to most any one that at [fol. 495] those stations it is necessary, because of the physical characteristics of the stations, for the Pennsylvania Railroad Company to load and unload carload traffic. Obviously we cannot let the consignee go into the cars through our stations, so that with respect to those stations the situation was and is entirely physical.

They are old stations. Both of those stations were taken over by the Pennsylvania Railroad Company from the United Railroad of New Jersey, by a lease of June 30, 1871, the arrangement becoming effective, that is, the Pennsylvania Railroad operation becoming effective July 1, 1871.

Now with respect to the other stations that do have team tracks, I cannot state any date on which the arrangement became effective there, but as closely as it can be determined, it must have been in the early nineties, and we should bear in mind there that certain of these stations, for example, Vine Street and Dock Street and Walnut Street wharf, are along the water front. They are in proximity to the steamship companies that now enter Philadelphia, and they were in proximity to the piers of the lines that entered Philadelphia some years ago.

I have reference as to the past, to the old Windsor Line that operated between Philadelphia and Boston, the M. & M. T. Company that operated between Philadelphia and the south, and still does; the Clyde Line which formerly operated between Philadelphia and New York.

Of course, because of the physical situation, the steamship companies must unload their traffic, either carloads or less, on their steamship piers, so that the Pennsylvania Railroad Company had definite competition at that time [fol. 496] and still has today, which it had to meet, and that I think is one of the reasons that led to the inception of it.

I think it should be made clear that this is not something which started over night. It apparently grew, and so far as I am able to determine, it started with commodities such as canned goods, dried fruits, nuts and other Pacific Coast traffic—that is, traffic that might come in by water and might also come in by rail, and gradually spread to other commodities.

Now by reference to the list it will also be noted that there are included certain stations that are not waterfront stations. As an illustration, ~~30th and Market~~, Fair Hill and North Philadelphia, and from my investigation with respect to those stations, I am led to believe that the spread to those stations was made because of the fact that in some instances they were at least reasonably contiguous to the others named—and I mean by that, Broad Street and Washington Avenue, would be roughly 14 blocks from the waterfront,

while the other stations are as a matter of fact intermediate to the waterfront stations. By the intermediate stations I have reference to North Philadelphia, 30th and Market, and so it will be seen that starting with the waterfront, the arrangement gradually spread to these stations located in various parts of Philadelphia proper.

It does not go to such outlying stations as points on our Chestnut Hill branch, or points in the far portions of West Philadelphia. Of course, it does go to North Philadelphia. That is the sum and substance of what I was able to develop from a historical point of view.

[fol. 497] Q. Now, Mr. Funck, the evidence shows that the company has made these contracts with certain contract warehouses, as indicated in exhibits 1 and 58. Will you kindly state what work the contract warehouses do for the railroad company in fulfillment of such obligations as they assume in those contracts. I am not asking you to recite what is in the contracts, but only what they do?

Mr. Hickey: First, I have an underlying objection. Mr. Funck is qualified as assistant general freight agent of the Pennsylvania Railroad, and my picture of that is he occupies an office over in the Broad street station. Now this question apparently invites Mr. Funck to tell just what services certain warehouses of the Merchants Warehouse Company performed on certain shipments on the 1st day of January, 1928, and at various other times. So far as I have observed, he has no qualifications that will enable him to describe that service.

Mr. Bikle: Have you had any first-hand examination of those companies, Mr. Funck—I mean those warehouses?

The Witness: I went around to see all of them personally.

Examiner Brown: To see the warehouses?

The Witness: To see the warehouses, but I did not enter more than three of them.

Mr. Hickey: May I ask my opponent to establish the date that Mr. Funck made his visits to the warehouses?

The Witness: I am reasonably certain it was on July 9th. It may have been July 16th, 1928. Then last Tuesday, with respect to certain of the same warehouses, I made a repetition visit, covering those along the Delaware Avenue waterfront. That was about October 2nd, 1928.

[fol. 498] By Mr. Bikle:

Q. But, Mr. Funck, you have made a study of the situation from reports and documents and conversations with people that were charged with those duties, and made these inspections to confirm that, and that inspection is not the sole basis of your testimony?

A. That is correct, sir.

Examiner Brown: Do I understand Mr. Hickey to object to the witness testifying in this respect?

Mr. Hickey: No, I am not objecting.

Q. What do these warehouses do under their contracts with the Pennsylvania Railroad Company?

A. The traffic is placed by the Pennsylvania Railroad on a warehouse track, which may be adjacent to the warehouse, or it may be a track which enters the warehouse. As illustrative of the first type, I can just take Shackamaxon and Kensington. As illustrative of the second type, River Front Stores and Webb Terminal.

The warehouse employes then handle the traffic by truck—that is, by hand truck, manual labor from the car and place the merchandise at some location in the warehouse. I do not know in what location they place it—that is, the warehousing—that is a warehousing proposition.

With respect to the traffic handled by the Quaker City Cold Storage Company, if it is to be delivered within the 48 hour free period of time, it is generally placed by them on the first floor of the warehouse, so as to be readily accessible for delivery.

They get it there in the same manner, by railroad track in the warehouse, the traffic being unloaded from the car into the warehouse by the employes of the cold storage company.

[fol. 499] The notice of arrival, which is a railroad form, is turned over to or is available to the warehouse company. When I say warehouse company, I am always including the Quaker City Cold Storage Company. The warehouse company gives notice of arrival covering the arrival of the shipment to the person that is named on the billing.

I have shown in exhibit 80 the forms of shipping documents that are used in connection with freight moving over our line. That covers also traffic that is consigned for delivery at the contract warehouses.

The block in which you would find the name to which the notice of arrival would be sent would be the fifth block from the top on the left hand side, containing the words "Consignee, address (final destination and additional routing)."

I have named two services that the contract warehouses perform under their contracts with the railroad. First, to unload freight, and second, to send out notice of arrival. They also receive freight at those points for outbound movement. In that event they load the traffic into the car in the same manner, that is by truck or manual labor, in order to make the customary carload shipment there for outbound movement.

On the inbound traffic delivered at the warehouses of the Merchants Warehouse Company, the railroad generally collects the freight charges on the traffic consigned to those consignees who are on our so-called credit accommodation list. With respect to the consignees who are not upon that credit accommodation list, the warehouse company may collect it. They are held responsible for it under the contract, or the railroad company may collect it.

[fol. 500] I have made an examination to find approximately the percentage of the freight charges on the traffic that is delivered at the warehouses, that is collected direct by the railroad from the consignee.

This investigation covers the period September 1st to September 22, 1928, and with respect to traffic passing through the Merchants Warehouse and taking it in terms of carloads, the railroad company collected 95.11 per cent of the freight charges, and the contract warehouse 4.89 per cent. In terms of dollars, the railroad company collected 93.90 per cent and the warehouse company 6.10.

When I give those percentages of 95.11 and 93.90, I mean that the railroad collected those from other sources than through the warehouse—direct from the persons that are interested in the traffic—so that as regards those charges, the warehouse company did not make collections for us, so it is only on a small percentage that they do.

Examiner Brown: I will ask the witness if he is testifying now with respect to facts within his own knowledge, when you stated that the warehouse company collects a certain percentage of these freight charges. Are those facts within your own knowledge?

The Witness: I think I can best answer your question by stating how I got them. I had our treasurer keep a record for the period that I have mentioned, namely, September 1st to September 22nd, inclusive, just what did happen with respect to inbound shipments during that period.

Mr. Hickey: Now if the Examiner please, all that will show is that the warehouse company paid the Pennsylvania Railroad on this alleged four per cent, and that the Pennsylvania Railroad Company collected freight charges from some one else on the other.

[fol. 501] Mr. Bikle: They did that on traffic that was consigned to people care of the warehouse, so that in line with Mr. Hickey's own witness, it is simply the same situation as he developed, that the warehouse does not pay these sums on its own account.

Mr. Hickey: I want to make it clear what my objection was. The way this witness left it was that on this four per cent the warehouse company collected freight charges. I have no objection to that. It can collect freight charges pursuant to its private warehouse business, all it wants to. I do not think that is pertinent to this case. That is the way the witness left it, but in Mr. Bikle's question he put it differently.

He said that the warehouse company collected this four per cent of freight charges for and on behalf of the railroad company, and I say there is no evidence before you that that was done. When he tried to get it out of the evidence, I objected to the witness testifying along those lines, and asked that the billing be brought in and the documents for the actual transactions be brought in, so that we could determine and have some opportunity to determine whether it was merely the case of the warehouse company paying the Pennsylvania Railroad freight charges that it is legally obligated to pay, paying the Pennsylvania Railroad Company its own freight charges on its own shipments, which is entirely different from this suggestion of Mr. Bikle that it is collecting those freight charges from some one else, for and on behalf of the Pennsylvania Railroad, and then paying them over to the Pennsylvania Railroad.

I say there is no evidence of that, and I want the actual documents here, if we are to go into that.

Mr. Bikle: All of my questions here have been directed [fol. 502] to pointing out what the warehouse company is doing for the railroad company.

Examiner Brown: That is what we want, the facts, if the witness knows and can answer, and my ruling is that he may do so, his testimony in that respect to be received subject to Mr. Hickey's objection.

By Mr. Bikle:

Q. What percentage of this money does the warehouse company collect for the account of the Pennsylvania Railroad Company, in accordance with the contractual stipulations?

Mr. Hickey: I object to that question. The subject is not a proper subject for opinion evidence.

Examiner Brown: I think my ruling covered that, Mr. Hickey.

The Witness: 6.10 per cent.

I was talking a little while ago of the service performed by the warehouse companies,—the contract warehouses for the Pennsylvania Railroad Company. The answers so far as I gave them relate to the Quaker City Cold Storage as well as to the Merchants Warehouse Company; the same general situation prevails there.

I stated in my testimony that there were only certain commodities that are covered by the tariff that relates to the Quaker City Company, so far as this unloading privilege is concerned. The limitation is this: The claimant is confined to butter, eggs, cheese and dressed poultry. As a matter of fact, it is my understanding that the Quaker City Company does not—has not up to the present time handled eggs. The allowance is restricted in that manner, because when it was first made to the Quaker City Company, effective in 1922, the entire arrangement was instituted because we found we were losing certain traffic, and especially these [fol. 503] particular commodities, because of the fact that we had no facility in the vicinity of Dock Street where the produce of the city is very largely delivered, and in many cases the traffic was being routed by us via Harrisburg and the Reading Company. What I mean is we turned it over to the Reading Company at Harrisburg, in order that they might make delivery in the city of Philadelphia, even

though the shipper did not prescribe that terminal service by the Reading.

Now that condition continued, and as a result of that, this arrangement was made with the Quaker City Cold Storage Company in order that we might participate in the traffic.

Now if I may recur for a moment to my testimony as to the various contracts, I stated that the written contract included in exhibit No. 1 that covers the warehouse that on my exhibit 58 is designated 6, has expired, as indicated by memorandum thereon.

So far as I have been able to determine, no changes have occurred in the handling of traffic at that warehouse, or the payment of allowances on traffic delivered at that warehouse, since the expiration date.

I have made an investigation to determine to what extent, if at all, the rates were affected by this service of unloading and loading that was established in the past at Philadelphia. In order to show that situation, I have examined a number of our tariffs, going back as far as the year 1886, and I will attempt to show by these copies of tariffs that have been filed as exhibits, and accompanying rate statements, that the same rate applied to all Philadelphia stations, regardless of whether we did or did not unload carload package freight at those stations. And the same thing is true with regard to the contract ware-[fol. 504] houses, and I have a series of exhibits which I think show that.

The first exhibit, No. 65, is an extract from the Pennsylvania Company's eastbound tariff No. 8, and that tariff at the present time is generally referred to as the Eastbound Guide Book. By reference to the second page of the exhibit, it will be noted that at the bottom of the page there are set forth certain Philadelphia deliveries, and that continues on the next page. Those deliveries include various stations, and that indicates that regardless of the individual station in the city of Philadelphia that was involved, the Philadelphia rate applied there. I may say just in passing, that there is nothing on this extract of the tariff which I have filed which states in plain English that the Philadelphia rates applied. That was before the days of tariff circular 20-A, and the compiler of the tariff simply assumed that when he said Philadelphia deliveries, that

meant Philadelphia rates. That condition will be corrected in the next exhibit.

The next exhibit, No. 66, is a similar extract, effective June 2, 1894. It will be noted that on the second and third pages of the exhibit, and continuing to the fourth page, certain Philadelphia deliveries are set forth, and on the last page of the exhibit it will be seen that under Philadelphia stations a provision was made for the application of Philadelphia rates.

Now the significance of this exhibit is that all of these Philadelphia stations took the Philadelphia rate basis, regardless of whether they were in the center of the city where we unloaded the carload package freight, or whether they were on the outskirts of the city.

We did not unload the carload package freight at all the stations at that time.

[fol. 505] Exhibit 67 simply carries the same sort of story forward, the issue being effective April 1, 1896, and I think I need not repeat what I said with regard to exhibit 66, because the situation is the same.

Examiner Brown: Were either of the tariffs represented by exhibits 65 and 66, filed with the Interstate Commerce Commission? There is no I. C. C. number on either one of them—if you know.

The Witness: There is nothing to indicate it, sir, but I am certain that No. 66 was filed with the Interstate Commerce Commission.

Examiner Brown: How about 65?

The Witness: I think the same answer applies with regard to that tariff.

Now turning to exhibit 68, this exhibit shows the same picture, but going westbound. Now the other exhibits up to this time have been eastbound.

Exhibit 68 is a portion of the Pennsylvania Railroad tariff I. C. C. G-507, applying to Central Freight Association territory, and the second page of the exhibit, being No. 234 in the tariff, sets forth the various Philadelphia stations that took the Philadelphia basis of rates, regardless of where those stations were located, and whether or not there was any loading by the Pennsylvania Railroad Company of package carload freight.

Exhibit 69 continues the history of the tariff, becoming effective June 1, 1899, and it will be seen by reference to page 2 of the exhibit that various Philadelphia stations are included, all subject to the Philadelphia rate basis.

Exhibit No. 70 carries the history forward to the effective [fol. 506] date of May 15, 1902, and on pages 2 and 3 of the exhibit, the same situation is set forth.

I have not reproduced the tariffs after that date, because I know of my own knowledge that there was no increase made in the Philadelphia rate in order to cover the loading or unloading of this traffic.

Exhibit 71 deals with the rate situation to and from Philadelphia, and I file it with the same object in view, but in order to show that the Philadelphia rate bore a certain relationship to the rates from contiguous rate groups. I do not think we need to take the entire exhibit, but taking page 1 as an illustration, in the middle of the page there are set forth the first four class rates from New York to Chicago, they being on the well-known old scale of 75, 65, 45 and 35 cents.

At the bottom of the page and continuing to page 2, it will be seen that Philadelphia eastbound took the customary differential of two cents under New York, and westbound the differential of two 6's and four 2's. I should like to explain I am not dealing with the differential question at all as such, but am simply trying to show that the rates to and from Philadelphia—and by that I mean not only the Philadelphia stations, but all stations in the large Philadelphia rate group which I will later show—were subject to a differential under the New York rate.

Turning to page 3 of the exhibit, and going directly to the bottom of the page, it will be seen, for example, in connection with the last line of rates as set forth, that the rates from Philadelphia to Erie, Pa., Erie being the middle column at the bottom of the page, again bore the customary differential of two 6's and two 2's under New York.

It will be noted that only four classes are set forth there. [fol. 507] Then turning to page 4 of the exhibit, at the top of the page it will be seen, dealing with Erie and Pittsburgh, that the Philadelphia rate was again fixed at two 6's and four 2's under New York.

I should like to explain in filing this exhibit that I did not compile it as it is written up here. I extracted it from

certain of our records, in order to set forth this history, confining the exhibit to that portion which dealt with the relationship as between Philadelphia and New York. I did that to save time, instead of rehearsing it in oral testimony.

Exhibit No. 72 sets forth the picture, effective September 15, 1896 and continuing to the date effective May 15, 1902, which, of course, would carry it several years thereafter.

It will again be seen by reference to this exhibit, which sets forth the rates from New York, Philadelphia and Baltimore to Chicago, that Philadelphia was again on its customary basis of two 6's and four 2's under New York.

Turning to exhibit 73, this exhibit sets forth a somewhat different picture. I have taken numerous stations of origin on the Pennsylvania Railroad in Trunk Line territory, and have set forth on the exhibit the existing class rates which apply to all Philadelphia stations, regardless of their location. In every case the class rate is the same to all these Philadelphia stations from the particular point of origin set forth.

[fol. 508] Some of the stations at which there is no unloading or loading by the railroad are Germantown, Overbrook—there are a number of them. Just a minute and I can give it to you more definitely.

Q. I just want to have you point out further that there are a substantial number, and some idea of where they could be found.

A. Frankford, Holmesburg—well I have covered pretty much the different outlying parts of the city—they are Philadelphia stations.

Exhibit No. 74 is one which shows the westbound class rates from New York and from a large group of stations not within the city of Philadelphia, but which are subject to the Philadelphia group rate basis to Chicago, Pittsburgh and Buffalo.

It will be seen that the stations which run from Lancaster on the west, Reading and Pottstown on the north, and Wilmington on the south, are all subject to the one rate of $1.36, down to 45½ cents to Chicago, with a similar situation with regard to Pittsburgh.

[fol. 509] Exam. Brown: What is the object of these rate exhibits?

Mr. Bikle: To show these rates have never included anything on account of the service of loading or unloading, as indicated in the more formal statement that I made when Mr. Hickey asked for the service.

Mr. Hickey: You will notice, if the Examiner please, that the reasonableness of these rates to and from Philadelphia under Section 1 of the interstate commerce act, covers those definitely put in issue.

Mr. Bikle: I do not think that that follows:

Mr. Hickey: I have no objection.

Exam. Brown: Your complaints cover sections 2 and 3 only, is that correct?

Mr. Hickey: Yes, but the allegations under section 2, dealing with devices, is something very broad, and as you know, under recent decisions of the Commission, a rate may be unreasonable if it is unduly low as well as if it is unduly high.

Exam. Brown: Are you going to rely on section 1 at all, Mr. Hickey?

Mr. Hickey: You will notice in the complaint I have not made a direct allegation of violation of section 1. I held that out deliberately with the thought that we might avoid a great deal of litigation on that point. However, I do not understand that because I have withheld that from the [fol. 510] complaint, that in arguing the question of reparation I am prevented from arguing these rates from the standpoint of whether they are shown to be unreasonable under section 1 of the Act.

Exam. Brown: I am not ruling, of course, as to whether or not you may bring in evidence or argument with respect to section 1, but merely trying to get your position as to whether or not you intend to rely on section 1, so that the Commission may have a clear cut idea of what the issues are in the case.

Mr. Hickey: Well, you see the position I am in now.

Exam. Brown: At the present time it is my understanding that you do not intend to rely on section one?

Mr. Hickey: The reasonableness of these rates under section 1 is now very definitely before you in a number of exhibits and considerable testimony of this witness.

Exam. Brown: Now do you intend to rely on section 1 of the Act?

Mr. Hickey: Yes sir, I do.

Mr. Bikle: I must object, Mr. Examiner, because there is no pleading under section 1.

Exam. Brown: It is not in the complaint. I will make no ruling with respect to that at this time. We will put that in the record and the remarks of counsel will be considered at the appropriate time.

Proceed.

[fol. 511] The Witness: Coatesville, Lancaster and Middletown, as examples, are intermediate to Philadelphia as regards Chicago, but the rates are the same. There is no loading and unloading service whatever performed by the railroad at Lancaster, Middletown or Coatesvile.

Exhibit 75 sets forth the same situation as exhibit 74, except that exhibit 75 shows the eastbound class rates, and it will be noted by reference to the large group in the center of the exhibit, that one class rate applies to this very large group of stations, many of them outside the city of Philadelphia, at which no loading or unloading is performed.

In order that the Philadelphia group which I have reference to may readily be seen, I have filed this exhibit 76, which is a map, showing the eastbound rate groups as applicable to traffic from Central Freight Asociation territory.

The diagram there speaks for itself, without explanation. I simply want to point to the Philadelphia group in the right center of the exhibit.

With respect to rates to and from that group, there is no difference whatever made on account of the loading and un-
[fol. 512] loading service. The rate is identical to all of those stations.

Exhibit 77 sets forth the situation with respect to commodity rates, the interstate class rates as shown on the previous exhibits.

Q. The same facts are portrayed there?

A. They are, sir, except that in connection with exhibit 77 I have acompanied it by a map, exhibit 78. That map deals specifically with rates on manufactured iron and steel from Pittsburgh, and again shows the large group of Philadelphia rate territory to which the Philadelphia rates are applicable from Pittsburgh.

Exhibit 79 is an exhibit which deals with various commodities from various stations on the Pennsylvania Rail-

road in Trunk Line Territory, and the significance of this exhibit is contained in the word "all" in the caption of the exhibit. That is, these commodity rates apply to all Philadelphia stations, regardless of whether or not there is unloading or loading at those stations.

The first page of exhibit 80 is a form of the uniform straight bill of lading. The fourth page of the exhibit is a form of the local freight waybill of the Pennsylvania Railroad.

Now in the form of the bill of lading, it describes the property as "received from" and then there is a blank. At that point the name of the person from whom the traffic is received is put in. That name is inserted in the fourth block on the right hand side of the waybill, that, just to identify it a little further, reads: "Full name of shipper (origin and date, original car, transfer of freight bill and previous waybill reference and routing when rebilled)."

Now turn to the line on the bill of lading that says "Con- [fol. 513] signed to." After that word a name will be inserted. That name would be inserted in the block of the waybill (page 4) which is the fifth block down on the left hand side of the exhibit, which reads: "Consignee, address (final destination and additional routing)."

Mr. Hickey: Now if the Examiner please, we are—by this sort of testimony, we are going to arrive just where we arrived at in the McCormick case—had to try it over again—a whole lot of testimony about consignors and consignees, and not one of them named. Just testimony piled up on a blank document, which, after it goes in this way, will blossom out in an argument in the brief of my opponent, which may indicate to somebody that he has proved there is some consignee of inbound shipments back and beyond these warehouse companies. Now that is the purpose of it, and I say to you that if there is any consignee back of these warehouse companies in Philadelphia, that they ought to come forward and name that consignee. Let us have some real names of real persons, instead of this proof of consignee, without naming one consignee of one shipment, and without any documentary evidence of even one actual shipment before us.

Mr. Bikle: Mr. Examiner, you will remember that Mr. Hickey and I made a stipulation, after examining a whole series of documents that he called for, seting forth the form of the consignment and showing what names appear in this block, and exactly how they appeared, and this is merely to give the substratum on which to understand that evidence, that is all. I have been very careful in my questions not to ask Mr. Funck who was the consignor or the consignee or anything of that kind. I am only trying, as you asked, to [fol. 514] let the facts speak for themselves in the light——

Mr. Hickey: I thought we did a pretty good job at that time by bringing in the actual documents, and you read into the record what appeared on them.

Mr. Bikle: This is only to give it a substratum for correct understanding.

Mr. Hickey: Then with that understanding I will withdraw my objection.

Mr. Bikle: I want to offer these exhibits 58 to 80 inclusive, Mr. Examiner.

Examiner Brown: Any objection to these exhibits, other than have been already stated by Mr. Hickey?

Mr. Hickey: Yes, I have several.

Examiner Brown: Please state them.

Mr. Hickey: Exhibit No. 59, I object to the following statement that appears on that exhibit as being an unfounded and unsupported conclusion, in direct conflict with the very substance of that exhibit. The statement that I object to reads as follows:

"Extracts from P. R. R. station list showing Merchants Warehouse Company warehouses and Quaker City Cold Storage Company Spruce Street stores as P. R. R. stations."

Now I submit if you read what follows, it does not show those warehouses to be P. R. R. stations at all, and that is an unfounded conclusion, and I move that it be stricken out. What follows is some impotent writings of something to the effect that it includes all facilities of Merchants Warehouse Company.

[fol. 515] Now I submit that that does not make those Pennsylvania Railroad stations, and that you cannot make

structures operated by a private concern, railroad stations, by merely putting such writings as that in the tariff. If they are Pennsylvania Railroad stations, then they must be rented and used as such, and the Pennsylvania Railroad must have the exclusive use of them to use them as such. I move that that exhibit be excluded.

Examiner Brown: As I understand it, with respect to exhibit 59, you are objecting to the heading of it?

Mr. Hickey: Yes sir.

Examiner Brown? Not as to the balance of it?

Mr. Hickey: No, I don't object to the balance of it—that is, I will take Mr. Funck's statement that those are actual reproductions of writings in the published tariffs listed on that exhibit.

I object to exhibit 60 on the ground that it is incomplete to such an extent that it should not be received in evidence.

Examiner Brown: Incomplete in what respect?

Mr. Hickey: It reads as follows:

"In the application of storage rules, the charges as published in Agent B. T. Jones' tariff I. C. C. No. 1491."

Now this exhibit has no standing whatever, unless the Jones' tariff is put in to support it. I don't know whether the Jones' tariff applies at Buffalo or Chicago, or where it applies, or how it applies, but there is no substance whatever in exhibit No. 60, unless and until the Jones' tariff is brought forward and offered in evidence to support it, or such parts of the Jones' tariff as my opponent relies on. I [fol. 516] have not had an opportunity to go through all of these exhibits, and I would like to reserve the right to move to strike out, after I have an opportunity to read them. It will take me two hours to read these exhibits. I will make such objections as occur to me now.

Mr. Bikle: I have no objection to Mr. Hickey making a motion to strike if he wants to after he has read them over.

Mr. Hickey: I object to exhibits 74 to 76, inclusive, on the grounds that they are offered to show that the rates, either including or excluding the allowances, are just and reasonable under section 1 of the interstate commerce act.

Now the evidence shows that the Pennsylvania Railroad Company has voluntarily paid allowances out of these rates for many years, and it seems to me that that is an

admission that the rates are too high, which cannot be set aside by these exhibits that I refer to.

Those are all the objections I will present at the present time.

Mr. Bikle: Mr. Examiner, taking these up in the order that Mr. Hickey dealt with them, exhibit 59, he objects to the phrase as P. R. R. stations. Now, it is, of course, true that those words are not part of the excerpts that are incorporated in this exhibit. We think that the excerpts, together with all the other evidence in the case, justifies that description. Mr. Hickey does not. It is as though either Mr. Funck had testified that that was his opinion or I had said as counsel I thought that was the result. It does not go to the weight—I mean it does not go to the admissibility of the exhibit. It merely goes to the weight to be attached to that phraseology. The Commission will pass on the real issue.

[fol. 517] Exhibit 60, Mr. Hickey says we ought not to introduce that without introducing Jones' tariff. There again that objecetion goes, not to the admissibility, but to the weight. It has never been the practice before the Commission to bring in the whole tariff or every tariff that is referred to by cross-reference.

Now as to exhibit 71 and following exhibits, Mr. Hickey objects to——

Examiner Brown: 71 and 76, inclusive.

Mr. Bikle: Yes sir; those do not bring in issue the reasonableness of the rates. They show the relationship of this service to the rates, and I understand that you have already admitted those for what they are worth. If you have any doubt as to the propriety of that ruling, I should like to make a more formal statement that I have already partially made, because I shall wish that it appear in the record if they are to be excluded.

Mr. Hickey: I just want to be heard further on exhibit No. 60. I am not in a position to cross examine this witness in the absence of the Jones tariff. I do not know what the substance of exhibit 60 is in the absence of the Jones tariff.

Examiner Brown: In so far as exhibit 59 is concerned, that exhibit will be received, subject to Mr. Hickey's objection, with respect to the heading of the exhibit. It is

understood that he has not objected to the remainder of the exhibit.

Exhibit 60 will be received, subject to tariff check against the Jones tariff referred to.

In so far as exhibits 71 to 76, inclusive, are concerned, the Examiner is not entirely convinced that the evidence con-
[fol. 518] tained in those exhibits is entirely pertinent to this case, but as heretofore stated, he will receive those for what they are worth.

My ruling, therefore, is that exhibits 58 to 80, inclusive, are received in evidence, and will be considered in connection with the objections raised by the various parties as to them.

Cross-examination.

By Mr. Hickey:

I have never been employed at any time in the service of the Merchants Warehouse Company nor in that of the Quaker City Cold Storage Company. I have not examined the ledgers, cash books and day books of the Merchants Warehouse Company. I have made no inquiry into its contracts, agreements or relations with its customers.

The Pennsylvania Railroad Company gives allowances to warehouse companies at the present time at Philadelphia, Baltimore, Communipaw, N. J., which is a part of the Jersey City, and Washington, D. C.

Mr. Bikle: Mr. Funck, I don't want to interrupt, but if Mr. Hickey will permit me, is there any similar arrangement at Pittsburgh, at the Duquesne Warehouse.

The Witness: Not any longer.

By Mr. Hickey:

The giving of the allowance referred to appears in Pennsylvania Railroad tariff G. O. I. C. C. 14400.

It follows that warehouse freight, that is, general merchandise freight is delivered in a great many cities in this country when transported by the Pennsylvania Railroad Company, without giving any allowance, for example, at Harrisburg.

I described the service performed by the Merchants Warehouse Company which I said was for and in behalf

of the Pennsylvania Railroad, and I used two types. I did not refer to the type of service when I referred to [fol. 519] those two classes of warehouses. What I referred to was that in the case of Kensington and Shackamaxon, the warehouse track runs alongside of the warehouse, whereas at River Front Stores it runs right into it. It was a type—it was a question of the physical method of getting to or into the warehouse. The service is the same substantially.

The distinction as I say that I made was with relation to the track of the Pennsylvania Railroad Company. In each instance the service is the same. The warehouse company unloads the traffic either by truck or man power from the car into its warehouse.

Q. And that is the only service involving the physical handling of freight that the warehouse company performs for and in behalf of the Pennsylvania Railroad Company?

A. I assume when you say physical, you mean the actual man handling of the freight, if it performed that service—if you mean the first, the answer is yes.

Q. Now assume the placement of a typical car at some one of these warehouses of the Merchants Warehouse Company, an inbound loaded car, and tell me where this service performed for and in behalf of the Pennsylvania Railroad Company starts, and where it ends.

A. The service starts from—when the warehouse employes enter the car and take the freight out of the car, handling it or trucking it into their warehouse.

Now, of course, I don't know what subsequent handling they may give it in the warehouse. Then the freight after entering the warehouse is subject to 48 hours free time, after it has gotten into the warehouse.

Now if the consignee takes delivery within the 48 hours [fol. 520] free time, I do not know if the warehouse makes the charge for handling out. It if my understanding they do not, so that the service would end upon delivery to the consignee.

By Mr. Hickey:

Q. Now Mr. Funck, I will ask you again to state just where the service performed by the Merchants Warehouse Company on the inbound car starts, just where it stops,

and draw the line of demarcation, if you can, between the trade service of the Merchants Warehouse Company, and the public service of the railroad company.

The Witness: I would consider that the service of the railroad company stops first, under one circumstance, upon delivery to the consignee; secondly, in the case of merchandise which may be stored beyond the free storage period, I would consider that it stops at the end of the 48 hour period at its point of placement within the warehouse—that is to say, at the point where the warehouse employes place it in the warehouse when they unload it from the car.

Examiner Brown: I will let that answer in as an opinion of the witness for what it is worth.

The Witness: In the course of my inquiry I was informed that the Merchants Warehouse Company distributed inbound carload shipments to various parties to some small extent. I could not name any of the parties for whom the Merchants Warehouse perform this distribution service. I did not ask with respect to any consignee by name.

I would be very glad to describe in detail just what I did to find out what handling of freight is performed at warehouses of the Merchants Warehouse Company and I would like to say again, Mr. Hickey, that with only two exceptions, I did not enter their warehouses. I viewed the matter from [fol. 521] the viewpoint of the physical handling up to the warehouse. In order to find that out, I went through one of the warehouses of the Merchants Warehouse Company and the Quaker City Cold Storage Company in Philadelphia, in order to see the location of the warehouse, the location of the warehouse track, and the method of handling the merchandise from the car into the warehouse.

Q. Tell me where any of this service performed by the Merchants Warehouse Company differs from the service on inbound freight performed by the Bailey Warehouse?

A. I do not know, sir.

Q. Tell me where any of it differs from the service performed by the Terminal Warehouse Company?

A. I don't know, sir. I haven't seen their warehouse closely.

Q. Well, did not you consider it worth while to go there and inquire into that service?

A. Why, I did not think they would let me in. I saw their warehouse, but I certainly did not make any attempt to get into them.

Q. Did you ask them?

A. No, sir, I did not.

Q. And after your exhaustive investigation you cannot point out now where any of the service performed by Bailey differs from the service performed by the Merchants Warehouse Company, can you?

A. I made no exhaustive investigation of Bailey's warehouse.

Q. Nor of the Terminal Warehouse Company?

A. No sir.

Q. Nor of any of the other complainants in this case?

[fol. 522] A. That is correct.

Q. Do you know whether inbound carloads of freight are set on tracks of other warehouse companies in substantially the same manner that inbound carload shipments are set at warehouse of the Merchants Warehouse Company?

A. Last week I saw one warehouse, and I think it is the Bailey Warehouse. It is my recollection that a car is placed alongside the platform. That is as far as I can answer your question.

Q. Did you not see just as much there as you did at any of the warehouses of the Merchants Warehouse Company on your visits?

A. No sir.

In addition to viewing these premises or warehouses, as far as I have explained to you, I discussed the matter with our division freight agent's office in Philadelphia, and in several cases with the freight agent in Philadelphia, in order to ascertain what they did in conjunction with such shipments. The man I discussed it most with was Mr. [fol. 523] Rowland in our office in the Bourse. I also discussed the matter with Mr. Robb. He is chief clerk, I think, at our Federal street station. I discussed the matter with Mr. Robert Hammersly, one of our freight agents; with Mr. William Hammersly, one of our freight agents, and with an assistant chief clerk at Walnut street wharf, whose name I do not know. I asked them two particular things that I wanted to know, who collected the freight charges. I also asked them in detail how the warehouse

company ascertained that a car of freight was there—that is, I am speaking now as to the physical handling of the car. I think that is all.

I don't think that that describes all of the service performed by the Merchants Warehouse Company, on which it has claimed allowances and obtained payment for. I think they told me that a shipment might be placed at a certain point in the warehouse, and then for some reason they might have to move it. In other words, if the shipment was trucked in at a door, placed in a certain location and stayed there until tomorrow, it might be necessary for physical reasons to clear that space and move it back.

I heard that the Merchants Warehouse Company was claiming and getting allowances on carload freight delivered from public delivery tracks in Philadelphia. When I heard about that, I inquired into it.

When I went around to these stations, I heard at two stations that traffic had been delivered, not through the warehouse, but from the team track. I was informed that certain traffic had been delivered from the team track at two freight stations. As a matter of fact, long before I made the inquiry, it appears that a gentleman representing the Interstate Commerce Commission, Mr. Sturm—that is as [fol. 524] closely as I can give you his name,—had made a previous inspection. As a matter of fact it just happened that I followed him up, and he had brought up this question—such traffic as I say had been delivered. I took the question up with Mr. Craft, one of our auditors, personally, in order to call his attention to it, but I found that as a result of Mr. Sturm's activities he knew about it, and he had already started the machinery going to collect back money from the Merchants Warehouse Company on the traffic delivered over the team track.

Examiner Brown: Allowances paid to the Merchants for that traffic?

The Witness: They were paid erroneously for that traffic.

Mr. Campbell: Public team track?

The Witness: Practically a public team track—our station track at whatever the point may have been.

Examiner Brown: The reason you have taken steps to require the repayment by the Merchants to the Pennsylvania of this allowance is that it is not covered by tariff authority, is that correct?

The Witness: Yes sir; traffic did not go through the warehouse.

Mr. Glasgow: Nor by the contract.

Examiner Brown: It is a question of whether or not the tariff authorized it, rather than the contract, as I see it.

Examiner Brown: This particular point may have some bearing in the case. That is why I am letting it in. It is not exactly within the issues as stated in the complaint, but it may have a collateral bearing. For that reason I will not exclude it.

Mr. Bikle: I have not asked you to exclude it, Mr. Examiner.

The Witness: One of those two stations I referred to [fol. 525] where this has been going on was at Broad and Washington Avenue; the other one I am not certain at the moment, whether it was Kensington or Shackamaxon, but both stations are not very far apart, and it was one or the other.

I can not tell the proportions of inbound freight carried at carload rates, carried at any-quantity rates and carried at l. c. l. rates,—I have nothing whatever to separate the carloads or less than carloads.

I did not make any inquiry into the inbound traffic to the River Front Stores. I was under the impression it was all carloads—that is true of 31st and Chestnut Street.

It was my impression that all of this freight—inbound freight upon which the claims were made was carload freight transported at carload rates. I really did not make any inquiry, because I had that idea. May I have just a second?

Q. Yes.

A. My answer still stands, but I do not see anything in the tariff referring to carloads only.

Examiner Brown: Don't see anything in the tariffs referring to carloads only.

The Witness: I made no inquiry whatever with respect to less than carload traffic. I see that they do handle less than carloads under this tariff.

Examiner Brown: At what station?

The Witness: At Dock street, but rather specifically to River Front Stores and Wood Warehouse, as additional points of receipt and delivery of carload and less than car-

load freight. At the other points the tariff does not state whether it is carload or less.

[fol. 526] In my inquiry into this matter I did not find out what services the Merchants Warehouse Company performs in handling the traffic of the Morton Salt Company, the Bon Ami Company, the Worcester Salt Company, the Quaker Oats Company nor any of those concerns referred to in the testimony of Mr. Henry. I did not get down to the handling of any individual shipments.

In my investigation of this matter, I did not inquire into the similarity or dissimilarity of delivery of carload freight to any other concerns in Philadelphia, other than the Merchants Warehouse Company and the Quaker City Cold Storage Company.

Q. Do you want to continue paying these allowances to the Merchants Warehouse Company?

A. Well, the way you put it, of course, you understand, Mr. Hiekey, that the Pennsylvania Railroad Company always wants to save any money that it can. However, we have these contracts with the warehouse company which we do not consider unlawful. We think we are obligated by them, and we cannot break them.

Now the say you put your question, the question is whether we want to continue it, if I understand you. If we discontinue it, I may say the arrangement, as you yourself know, has been in effect for a very long time, and any move to discontinue it would be very unpopular. Just bear in mind in connection with that that the payment of the allowance carries with it the unloading of this carload traffic. I think you have a background to the whole thing that you cannot overlook. That background is the fact that I have already referred to in my direct testimony that we make delivery. We unload certain carload freight and make de-

[fol. 527] livery over our platforms. That has been in effect for a great many years. We have the competition with these steamship lines who unload on to their piers. In doing our unloading we cannot overlook this competition with the steamship lines, so that you see the competition there. Now if we do it at our own freight stations, then I don't see why we should do it at a contract warehouse if it is confined within reasonable bounds. Coming back to the first part of your question, don't overlook the fact that the

payment of this allowance is not simply a gift, it is for the unloading and the other service.

All of these complainants have to unload the freight that comes to their warehouses, and when it is shipped inbound over the Pennsylvania Railroad, they don't get these allowances.

I spoke of the competition of the steamship lines. I have in mind traffic to different portions of the country. Take canned goods as an illustration. We handle canned goods outbound. The steamship companies also handle that traffic outbound. Now there is definite competition between our company and the steamship company. I have in mind the Philadelphia & Norfolk Steamship Company very specifically in taking traffic away from us, and they have, as far as I recall it, through rates from Philadelphia to Central Freight Association territory, via water to Norfolk, thence rail lines beyond, and they are in direct competition with us.

I haven't in mind any other specific commodity. I have in mind any general merchandise that they can handle and that we can handle.

[fol. 528] Q. Now will you point out just how the giving of this allowance to the Merchants Warehouse Company helps you out in that competition with the steamship lines for traffic?

A. I don't think I said that specifically. My statement was this: You asked me about the allowance to the Merchants Warehouse Company, and I showed you that that is not a question of allowance alone. It is a question of unloading carload freight, also loading. I am just speaking of unloading. Now that unloading is not confined to these contract warehouses. It is also performed at our other Pennsylvania Railroad operated freight stations in the city of Philadelphia. There is where the steep competition comes in.

Q. Now can you specify any other commodities in this steamship traffic?

A. Well, I haven't in mind any specific situation that I have heard of. I would say for example such things as vegetable oils, lard and lard compounds, and the numerous kinds of package freight that a steamship company would handle and that we would handle.

In my study of this competition, I did not go into the cost of trucking to and from the steamship lines, as compared with the cost of trucking to and from these inland warehouses shown on my map.

As to the Pennsylvania Railroad, I would say there are 33 stations that have public delivery tracks and only two that have not public delivery tracks.

Redirect examination.

By Mr. Bikle:

Q. Mr. Funck, in explaining to Mr. Hickey your views as [fol. 529] to when the railroad's contract with the shipments handled at and through the warehouse terminals—warehouse companies, you referred to the storage of that traffic during what you call free time, or until delivery by the warehouse to the person who took it away within the free time. Has—is any payment made by the railroad company to the warehouse company on account of having the freight stored there during that period over and above this allowance that is shown in your exihbit 62, or does that allowance cover that matter as well as the other?

A. That allowance covers that matter.

By Mr. Glasgow:

Q. Who insures the freight while it is—during that 48 hours?

A. The warehouse company.

Q. Does the railroad company pay the insurance?

A. No sir.

Q. Mr. Funck, in any report made to your company by the warehouse company as to the condition in which the freight is received, when it is taken out of the car?

A. I have not gone into that in detail, sir. I could only give you my general understanding of it.

Q. Haven't you seen statements to the railroad company where there was a report as to the condition?

A. No, I would not say that.

By Mr. Hickey:

Q. Well, Mr. Funck, don't you know from your experience as a traffic official of the railroad, that at all points on

the Pennsylvania Railroad where it delivers freight, if a shipment is damaged it gets a claim and a statement of the [fol. 530] condition from the claimant?

A. That is correct.

Philadelphia, Pa.,
October 9, 1928.—9:30 o'clock a. m.

Met pursuant to adjournment before Examiner R. M. Brown.

Appearances: Same as before.

Proceedings

EDMUND FUNCK resumed.

Recross-examination.

By Mr. Hickey:

I have produced the copies of freight bills from one of the three stations that I referred to yesterday. It is the same form as the second underlying copy, entitled "Local Freight Bill", exhibit No. 80, fifth page.

I would certainly think that the arrival notice was stricken off at the same time the freight bill and the balance of the forms in this exhibit 80 were struck off, at a freight office of the Pennsylvania Railroad Company. Of course, some of the traffic, you understand, might originate at a point beyond our line, but that would be the case with respect to the traffic originating at a Pennsylvania Railroad point. I think this arrival notice was issued in the regular freight station of the Pennsylvania Railroad.

I have made a brief examination of the first book of those freight bills and I find one here billed prepaid. Yesterday [fol. 531] I gave some percentage figures. In computing those percentage figures I did not take into account the inbound shipments delivered at the Merchants Warehouse Company that were billed prepaid.

Q. Now may I see one of those freight bills on some shipment consigned to the Merchants Warehouse Company? Pick out the first one you find.

A. (Handing counsel a freight bill.)

Q. Mr. Funck, you have shown me a freight bill No. 40382, under date of June 23, 1928, purporting to cover a shipment of baled hay, and under the caption "consignee, address, final destination and additional routing," I find the following typewritten entry: "M. Callan, care of Merchants Whse." I will ask you, Mr. Funck, if by looking at that document you can determine from whom the Merchants Warehouse Company obtained the freight charges on that shipment?

A. No, I cannot tell by looking at that document—that is, assuming you want a definite answer.

I could not say at the moment whether they have a record in the local freight office or in the Treasurer's office which would indicate the exact person from whom they obtained the freight charges. They may or may not have. I don't know who keeps that exact record. I would assume it is at the local freight office.

What I did in my investigation was I asked at the various freight stations, without respect to any particular shipment, how they collected their freight money; how they actually got possession of the money. In general, with respect to the traffic consigned to persons who are on our so-called [fol. 532] credit acommodation list, that money is collected by the Pennsylvania Railroad through the customary channel—that is, the treasurer's office, directly from such consignee. With respect to the traffic consigned to persons who are not on that credit list, the traffic is placed by us on the warehouse track in the customary manner; the warehouse unloads it and the warehouse company is given or issues a document similar to this, indicating that it is collect, and they are told that the consignee is not on the credit accommodation list, so that we warn them that we look to them for the collection of freight charges, so that they may not deliver it without the collection of such charges. Now your question now is the exact document they have for indicating who paid the freight charges. I didn't investigate any such document.

Now the second part of the question is with regard to the treasurer's office. What I did there was I told the treasurer to give me a statement or a summary of the charges col-

lected respectively by the Pennsylvania Railroad and by the Merchants or through the Marchants Warehouse Company, and that is the summary which I have and which I referred to in speaking of my investigation through the treasurer. Referring to those freight bills again, the Pennsylvania Railroad Company when it sets out to collect freight charges on one of those shipments, apparently can collect those freight charges only from somebody named on that freight bill.

[fol. 533] Q. However, the Merchants Warehouse Company, if it sets out to collect freight charges from some customers that it has private dealings with, it does not necessarily have to collect those freight charges from somebody who is named on that freight bill, does it?

A. I don't know how they get it. I did not go into that point in my investigation.

Q. I want to question you about the Jones' tariff referred to in your Exhibit No. 60, which is I. C. C. 1491.

A. I have that tariff. It has ben superseded by another tariff effective April 1, 1927.

Mr. Hickey: Mr. Funck, I will read from the top of page 10 of that tariff, and will you follow me and see if I read it correctly:

"Storage rules and charges applicable to freight held or stored in or on railroad premises of railroad parties to this tariff."

Did I read it correctly?

A. That is correct, sir.

Q. You have examined this tariff, I take it, Mr. Funck?

A. In general. You realize I did not have an opportunity to go into it in detail.

Q. Is it true that there are two classes of rules in that tariff, revenue rules and free time rules?

A. That is correct.

[fol. 534] Q. Now in your exhibit No. 60 you refer to a tariff provision which apparently makes the free time provisions of that tariff applicable at warehouses of the Merchants Warehouse Company, isn't that true?

A. That is true.

Q. And only the free time provision?

A. That is true, by the caption.

Q. Now Mr. Funck, the free time is an absolute vacuum when you separate it from the revenue rules of the tariff, is it not?

Mr. Bikle: Mr. Examiner, I think that is getting into the argumentative state. That is where Mr. Hickey and I entertain different views.

Mr. Hickey: All right. I am perfectly willing to let is go that way. I won't press the question.

Exam. Brown: The statement in exhibit 60, the following appears:

"The following warehouses in Philadelphia, Pa., are considered freight stations during the free time."

Will you tell me who considers these as freight stations? Does the Pennsylvania Railroad?

The Witness: Yes sir.

F. D. No. 199 of the Pennsylvania Railroad Company is a list of private sidings, steamship line piers and carload and less carload deliveries. This is not a filed tariff. I [fol. 535] stated yesterday that there were two Pennsylvania Railroad stations in Philadelphia that did not have public team tracks, and that there was 33 that did. In F. D. No. 199 there seem to be listed a great many more than those 33 stations. When I spoke yesterday of 33 stations, I meant 33 agency stations.

Now you will notice by reference to this list that we have included therein deliveries,—that is, we have taken a station and have listed thereunder its various deliveries. In order to clear that up, if you will permit me, I will take one single illustration, North Philadelphia, and refer to it on map exhibit No. 58. Now North Philadelphia is one station, but taking this map as an illustration, you will find that we have a 12th street yard; that yard is immediately northeast of the K in the circle on map exhibit 58; that 12th street yard is under the jurisdiction of North Philadelphia.

Similarly we have what we call a Diamond street yard. That yard is quite a little distance from North Philadelphia where our tracks on the New York division cross Diamond street, but it is also under the jurisdiction of North Philadelphia. Now I venture to say that we might take numerous other illustrations where the same thing is true, but I think that one illustration will very clearly show you what the

situation is. Just to go a step further, I find here a number of our Chestnut Hill branch stations listed. Midvale is an illustration of that. Midvale similarly is under the juris-
[fol. 536] diction of North Philadelphia, and it is shown on the map, exhibit No. 58, about two inches to the left of the letter K. Now those illustrations could be multiplied a number of times.

The two stations which I stated did not have public team track delivery were Dock Street and Walnut Street wharf. Walnut Street wharf is not a station used for the interchange of traffic with steamship lines. Washington Avenue wharf is.

Q. Again referring to page 26 of that document which I identified as F. D. 199, that shows quite a number of qualifications concerning the handling of freight at various stations—that is, that some of those stations will receive inbound freight only from certain deliveries, some of them will handle outbound l. c. l. freight under certain conditions, and there are a number of qualifications on that page, are there not?

A. May I just revise it to this extent—there are a number of qualifications with regard to carloads and less and with regard to livestock, and so forth, and the territorial restrictions are confined more generally to Dock street, Walnut street Wharf and Vine street, and the reason for that is the reason I gave yesterday, using Walnut street wharf we float traffic from our Camden terminal to Walnut street wharf, so as a physical matter we are confined to traffic from West Jersey & Sea Shore Railroads, our New Jersey territory and New England, and the same general situation with regard to Dock street and Vine street.

[fol. 537] The document above referred to, F. D. 199, is put in the hands of the employees of the Pennsylvania Railroad to guide them in certain respects—with regard to shipments for certain consignees in Philadelphia; and the particular location where shipments will be delivered. It is a document issued by the traffic department and the accounting department of the Pennsylvania Railroad, but it is chiefly a traffic department issue. It is not filed with the Interstate Commerce Commission. Copies of it are sent to our connections at junction points to assist them in the forwarding of traffic to Philadelphia for the certain con-

signees designated therein. It is just a list of certain facilities that the Pennsylvania Railroad have, and the uses which they should be put to. It is to facilitate the delivery of freight in Philadelphia.

In my inspection of the warehouses of the Merchants Warehouse Company, I did not notice that the Vacuum Oil Company occupies certain space in the Federal Street Stores. As to whether I noticed that Sherwin-Williams Company occupied certain space in the River Front Stores, I cannot just give you yes or no to that. I was not in the River Front Stores but I did notice that Sherwin-Williams had their sign on some portion of the outside of the River Front Stores. It is either painted thereon, or else it is a small sign that hangs over one of the entrances.

Q. Did you notice quite a number of lessees of the Merchants Warehouse Company occupying space in these vari-
[fol. 538] ous warehouses, when you went around them?

A. I cannot say whether they were lessees, but I can say this, that as to the River Front Stores particularly, I did notice a number of signs, either painted thereon, or signs hanging thereon, indicating various concerns, such as Sherwin-Williams, Richardson & Boynton, and various other concerns who evidently have their location in those Stores.

There might be 50 of those concerns, based on these signs there might be 100, it might run that high; I did not count them.

Q. Now when you found those concerns occupying those buildings, or certain space in those buildings, that did not prevent you from putting in this exhibit No. 59, indicating that the same facilities were included in certain freight stations of the Pennsylvania Railroad?

A. No sir, my exhibit 59 simply portrays what our tariff shows.

[fol. 539] By Mr. Campbell:

Q. Mr. Funck, assuming a shipment delivered at one of the Merchants' Warehouses here, and the bill of lading reads John Smith, care of Merchants Warehouse Company, and assume that that is an order-notify bill of lading, when that shipment reaches one of the warehouses of the Merchants Warehouse Company, is it delivered to the warehouse company without surrender of the bill of lading?

A. I cannot give you a yes or no answer on that. What happens is this: The car is placed on the warehouse track, and our people at the respective freight stations tell the Merchants Warehouse Company, partly by means of a document similar to the one which I have filed as exhibit 80, that the consignment is an order consignment and that it must not be delivered wtihout surrender of the bill of lading. In other words, we look to the Merchants' Warehouse Company not to turn it over to the consignee until the bill of lading is surrendered.

Q. Ordinarily in the case of any shipment over your railroad on an order-notify bill of lading, the railroad company would not deliver that shipment without surrender of the bill of lading, would it?

A. That is correct.

[fol. 540] Exam Brown: At this time I think it would be relevant and helpful to get the exact position of the intervenor represented by Mr. Campbell.

Mr. Campbell: If your Honor please, the position of the intervenor is simply this: It is a Federation association, composed of about 300 members, millers located all over the country who ship large quantities of flour to Philadelphia, and under the arrangement which exists at Philadelphia, which is directly in issue here as I understand it, under the discriminatory part of section 2, of the Act, and also under the allegation that it violates section 1 of the Elkins Act, we claim that we have a right to be heard, because we claim we are injured by this practice, and we claim we have a right to be heard, because the issue is squarely raised as to the legality of this transaction here at Philadelphia. Now ordinarily I will grant you that under a section 3 case that where the Commission would issue an alternative order, then, of course, the discrimination could be removed by the railroad company in one of two ways: It could grant the same to the next contract warehouse, or it could cut the whole thing out. I think the section 2 issue clearly gives us a right to be heard here in this case. We are not seeking reparation at all.

In this case, under the theory of agency, for a 24-hour period the flour is delivered to the warehouse company, and then it—and then a different situation exists. That warehousing agency and very often the miller who has shipped

this flour finds himself in the position where his draft is still in the bank for three to six months, according to their testimony, and that of course is highly prejudicial to the miller.

[fol. 541] Examiner Brown: The Reading may proceed.

WILLIAM B. GHEEN was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Woodcock:

My name is William B. Gheen, address, Reading Terminal, Philadelphia, Pa. I am employed by the Reading Company in the capacity of assistant freight traffic manager. I was appointed assistant freight traffic manager May 28, 1928; was general freight agent for about a year prior to that time. About four years prior to that as coal freight agent, and about two years service as division freight agent, Philadelphia territory.

I am familiar with the issues involved in the complaint which is Sub No. 2 in this docket.

I have prepared a map (exhibit 81) showing the various freight stations of the Reading Company in the city of Philadelphia, also indicating the location of the warehouses with which the Reading Company has contracts.

The map, as will be noted, shows all of Philadelphia [fol. 542] County, and prominent thereon the line of the Reading Company and its various freight stations, and added to the map in symbols has been shown the locations of the Pennsylvania Warehousing & Safe Deposit Company and the Philadelphia Warehousing & Cold Storage Company. The Philadelphia Warehousing & Cold Storage Company is shown on the map as indicated by the blue cross in the blue circle at a point adjacent to our Willow and Noble Street station.

The warehouses of the Pennsylvania Warehousing & Safe Deposit Company are indicated by numbers in red circles, 1 to 5, inclusive, 1 the Port Richmond Stores near our Port Richmond stations; 2, the Poplar street store, just north of

our Willow and Noble street station, but under the jurisdiction of our Port Richmond Station; No. 3, the 16th street Stores—16th and Callow Hill Stores near our Broad and Callow Hill street station; 4 and 5, the Delaware avenue Stores, including that group known as Delaware Avenue Stores and the Moro Phillips Stores, which is one of the units of the Delaware Avenue Stores. The legend shows as I have explained.

The nature of this section of the city where the warehouses that I have mentioned are located is the highly developed industrial section of Philadelphia.

The general rule with respect to the loading and unloading of package freight, carried at carload rates, as appears in the Consolidated Freight Classification, provides that the owners shall load or unload the carload freight carried at carload rates.

There are exceptions to those rules and those as made by the Reading Company, published in supplement No. 48, to [fol. 543] I. C. C. No. 189, provide that at certain stations named the Reading Company will load or unload package freight, carried at carload ratings.

I have a statement (exhibit 82) containing an excerpt from the Official Classification, and also from the Reading Company's exceptions, dealing with this question.

This loading and unloading service referred to in item 625-B, as shown on the exhibit is not performed immediately at the railroad freight station in all cases.

In addition to providing for the loading and unloading of the package freight at the freight stations, we also have arrangements for performance of the same service at the warehouses which are shown on the map, exhibit No. 81. These arrangements are covered by contracts which are already a part of the record in this case.

By Mr. Woodcock:

Q. Mr. Gheen, will you please state to what warehouses the contracts which have been introduced in evidence as exhibits 53 to 57, inclusive, relate, referring to your exhibit 81?

A. The original contracts relate to the agreements between the Philadelphia & Reading Railway Company, the predecessor of the Reading Company, with the Pennsyl-

vania Warehousing & Safe Deposit Company and with the Philadelphia Warehousing & Cold Storage Company. The original contract with the Pennsylvania Warehousing & Safe Deposit Company relates to the 16th street Stores, but by subsequent agreements, the contracts—the terms of them were extended to the other stores of the Pennsylvania Warehousing & Safe Deposit Company, Delaware Avenue Stores and Moro Phillips Stores, and also another contract with the Port Richmond Stores.

Exhibits Nos. 53 and 54 include the contracts which relate [fol. 544] to the 16th Street Stores.

Exhibit No. 55 and exhibit No. 56 relate to the Delaware Avenue or the Port Richmond Stores.

Exhibit No. 57 relates to the contracts covering the warehouses indicated by the blue cross on my exhibit No. 81, being the warehouse of the Philadelphia Warehousing & Cold Storage Company.

The contracts bearing exhibit Nos. 53 and 54, relate to all of the warehouses indicated by the red letters on my map, with the exception of the warehouse indicated by the red letter 1.

I am familiar with the service which the warehouses render for the railroads under the contracts which I have just mentioned. The warehouses perform the same service as the carrier would perform at its freight station.

Mr. Hickey: I object to that. That is an unfounded conclusion.

The Witness: I know it.

Examiner Brown: The witness may finish his answer, and then I will hear Mr. Hickey and will rule it out if I deem it improper.

The Witness: That is the unloading of the freight from the car, inspection of the freight for possible damage, responsibility for the freight, insurance, the delivery of freight to the owner, and the collection of freight charges—exactly the same service that one of our agents performs at one of our own stations.

Mr. Hickey: I move to strike out the witness's answer on the ground that he is not qualified to testify what is done with this freight, after the car is placed on the private siding at the warehouse. These warehouses are private corporations. There is nothing shown in his qualifications

[fol. 545] that he ever was in the service of these warehouse companies or ever was in a position to gain any information about what these companies do with freight after they take possession of it.

Mr. Woodcock: Of course the witness testified that he was in a general capacity at Philadelphia for a number of years, and he also said that he knew what services they render. If Mr. Hickey wishes, I can go further into the basis of his knowledge.

Examiner Brown: In order to lay a basis of fact for his knowledge of the situation, I would suggest you do that.

By Mr. Woodcock:

Q. Mr. Gheen, what is the basis of your information with respect to the services rendered by the warehouses under their contracts with the railroad company?

The Witness: I should first state that in the years 1922 to 1923, if I recall correctly—it was about that time I was division freight agent for the Reading Company. My territory included all of the city of Philadelphia. It was my duty to familiarize myself with the freight handling and practices in the city of Philadelphia, acquaintanceship with the shippers and receivers, the warehouse company, and every one handling freight. My duties took me to the freight stations, to the warehouses, where I conferred with our own employes, not particularly with the warehouse business, but with all freight business. I visited the various warehouses, not only the ones that are named here, but every warehouse in Philadelphia, and I am familiar with their operations.

I cannot recall any single instance of any particular kind of freight being handled, but from walking from floor to floor of the various warehouses, interviewing their super- [fol. 546] intendent and talking with them, the heads of the warehouses, why, of course, I know what they do in those warehouses.

Mr. Hickey: I urge my objection.

Examiner Brown: The evidence will stand and will be considered in connection with the objection.

The Witness: I know that the warehouse companies are performing the services which they agreed to perform under the contracts here in question for the railroad.

The railroad company pays the Pennsylvania Warehousing & Safe Deposit Company for performing such service, the amounts as stated in the contracts, 30 cents a ton on the general merchandise, 15 cents a ton on newsprint paper, and that latter payment is a modification of the original contract.

The Philadelphia Warehousing & Cold Storage are paid 50 cents a ton on articles requiring cold storage or refrigeration.

Examiner Brown: What is your tariff authority for those payments?

The Witness: We do not publish any tariff to show those payments.

I spoke of a payment for newsprint paper being 15 cents. That amount represents a reduction from the original 30 cents generally applied to merchandise. The original amount was 30 cents, and that was reduced to 15.

I have a mimeographed copy of a letter (exhibit 83) dated January 31, 1908, written by B. H. Bail, general freight agent of the Reading Company, to M. E. Levering, treasurer and general superintendent of the Pennsylvania Warehousing & Safe Deposit Company, providing for this reduction in the payment to be made in connection with the [fol. 547] handling of shipments of newsprint paper. These contracts were made many years ago, and of course there is no one available who can state of their own knowledge as to the conditions that brought about these agreements, but from general information that can be obtained, the railroad companies at that time felt the need of additional facilities, where this carload package freight could be unloaded and taken care of, delivered, where additional facilities could be provided for storage and general service that might be required by the commercial interests of Philadelphia. It was also a factor advantageous to the carriers in having the equipment promptly released, as would not be the case on team track deliveries, and that in my belief brought about these contracts with the warehousing concerns.

The following stations have jurisdiction over the warehouses shown in my exhibit No. 81:

Port Richmond station has jurisdiction over the Port Richmond Stores, indicated 1 in red circle, as they also have jurisdiction over the Poplar street stores, circle 2.

Our Broad and Callow Hill street station has jurisdiction over the 16th street stores indicated by circle 3. Our Willow and Noble street has jurisdiction over the Delaware Avenue stores, Nos. 4 and 5 on the map. Noble Street also has jurisdiction over the Philadelphia Warehousing & Cold Storage Company's warehouse, indicated by the blue cross in the blue circle on the map.

All of these stations that I have mentioned as having jurisdiction over the warehouses are stations which are included under the Reading Company's exceptions in my exhibit 82, and stations at which under that exception the railroad performs loading and unloading service in con-
[fol. 548] nection with carload package freight.

By carload package freight, I mean carload package freight carried at carload rates.

There are supplemental facilities which are used in connection with the handling of freight consigned from and to these stations. At all of the larger stations there are supplemental facilities, which are not listed as separate and distinct stations, or even as parts of those stations. Probably I can best explain that by stating that at Willow and Noble Street station, one of the largest stations in Philadelphia, there are several places where carload freight can be and is unloaded. Under the jurisdiction of that station where piers are, the same service is performed in the handling of freight as would be performed at the Willow and Noble Street group of freight houses, but we consider them pier stations, and they are just as much a part of that general layout as an individual warehouse at Willow and Noble Streets may be, and that condition is true at a number of other points.

The Reading Company has 46 freight stations in Philadelphia County.

This exception in respect to the loading and unloading applies only at 12 of those stations.

All those stations at which exceptions do apply are located in the industrial section to which I referred in discussing my exhibit 81. The highly developed commercial section of Philadelphia surrounds these stations.

I would like to add, so that our position may be clear, that these contracts that we have made, have, since their inception, been entirely satisfactory to the carriers. The

warehouses have performed their service to us in a satis-
[fol. 549] factory manner, and we believe that this service is of public interest, advantageous to the commercial interests of Philadelphia, and that is sustained by the interest that those commercial interests have taken in this proceeding, and we desire to have this practice sustained.

Examiner Brown: These exhibits will be received as defendants' exhibits 81 to 83 inclusive, and will be marked in evidence.

Cross-examination.

By Mr. Hickey:

Those extra facilities that I referred to in my testimony are not listed in circular No. 225 of the Reading Company. In my testimony in referring to some documents I put into evidence, I said something to this effect, that the Reading Company had a good many delivery facilities that are not specified in these documents that were put in evidence. Those various facilities are not listed in that document No. 225 as separate and distinct facilities, although this document does show the location and the station authority over such locations of the various warehouses, not only those that we have mentioned in this proceeding, but other warehouses. It also shows the stations in the Philadelphia city delivery, and indicates the character and kind of freight handled in those facilities. It does not show, as I tried to illustrate, the piers as station facilities. My purpose in mentioning that was to show that we do have other facilities in Philadelphia, other than those that are listed as regular freight deliveries.

That circular No. 225 is an official publication of the
[fol. 550] traffic department or operating department of the Reading Company, but it is not filed with the Commission.

The purpose of this circular is to have in the hands of our agents at the outlying—or the stations out of Philadelphia, information that will enable them to properly forward freight that may be consigned specifically to deliveries or to consignees in Philadelphia. That is the general purpose of the circular, and I might add also, furnished to our connections.

These payments that I testified to, are made only on freight transported at carload rates and are not made on freight transported at l. c. l. rates.

Redirect examination.

By Mr. Woodcock:

The circular bearing No. 225, is not published as a tariff with any Commission.

With regard to the facilities at particular station-, in my opinion the use of the name of the particular station certainly does include any facilities that are used in connection with that station.

The payments to which I referred are only made for such traffic as is covered by the contracts.

We have made investigations from time to time of the payments to the warehouse companies, for the purpose of determining whether or not our agents were submitting the proper statements. Our investigation has been that in no instance has any payment been made to the warehouse company on any traffic in which the warehouse company would have ownership, or any ownership interest in it.

[fol. 551] By Mr. Glasgow:

Q. Does you answer show or is it intended to show that wherever your investigation showed that the warehouse company had any beneficial ownership in the traffic, that no payments were made to it?

A. That is correct.

Examiner Brown: The Baltimore & Ohio may proceed with its case.

H. G. Settle was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webber:

I am assistant to the freight traffic manager of the Baltimore & Ohio Railroad Company, at Baltimore, Md. My

testimony in these proceedings relates solely to docket No. 20968, Sub No. 1, which is the complaint of Bailey, et al., against the Baltimore & Ohio Railroad Company.

I have made a study of this case as it affects the Baltimore & Ohio and am familiar with the issues.

I offer, as exhibit 84, a map of Philadelphia, showing the location of stations of the Baltimore & Ohio and their deliveries within Philadelphia.

That map shows our station deliveries in the city of Philadelphia, operated by our local forces along the Delaware River, as well as our 24th and Race Street freight station and team tracks; also our inland station at Lehigh Avenue and Howard Street.

It also shows the location of the warehouse of the Pennsylvania Warehousing & Safe Deposit Company, known as [fol. 552] the Delaware Avenue Stores, and the Moro Phillips Stores; also the warehouse of the same company at 23rd Street, known as the 23rd Street stores. The warehouse at the last location is immediately across the street from our local station platform, while the warehouse on Delaware Avenue, known as the Delaware Avenue Stores and the Moro Phillips Stores are across the street, Delaware Avenue, from Pier 24.

The general practice with respect to the loading and unloading of carload freight throughout Official Classification territory is for the consignor to load and the consignee to unload carload freight. There are, however, exceptions to that general rule at points particularly along the Atlantic seaboard, such as New York City, Philadelphia, Baltimore and Washington, where the carriers or their agents perform that service. It is very impractical at some points to permit the consignees or owners of the freight to do that service themselves. For instance, we have stations at New York which are not reached by rail. It is necessary to float carload shipments to those stations and place those floats alongside the pier or dock, and to release those floats it is necessary for the local force to unload them and place the contents of the car at a convenient location on the pier, where the owners of the freight can take delivery and truck it away. It would be impractical—altogether impractical to permit owners or consignees to come on the pier and perform that service themselves. The situation along our

Delaware River piers at Philadelphia—some of them at least—is comparable to the situation at New York.

Another reason why we perform this service in these several cities is to meet water competition; particularly [fol. 553] with respect to Philadelphia there is a very considerable amount of water competition which we are required to meet. I might call attention to the competition as between Philadelphia and Baltimore. We run into that competition daily. There is considerable tonnage being handled by the boat lines. Those boat lines naturally load and unload the boat from their piers without requiring the consignor or consignee to perform any service in connection therewith and, therefore, we have felt that we were required to meet that competition. We have similar competition from Philadelphia to New York and Boston, and Philadelphia to the southern Atlantic ports, and even to the interior, where rates are published by the boat lines on a differential basis under the all-rail rates. So that is another reason why we have been called upon to perform this service of unloading and loading carload freight at certain of our stations in these cities, whereas at other points the service is performed by the shipper or consignee.

My testimony is related specifically to the exceptions to the general rule as to loading and unloading at the Baltimore & Ohio stations, where the service is performed by its own employes.

I have an exhibit showing the stations in the city of Philadelphia operated by our own employes, at which we perform this service, and the same exhibit includes the warehouse deliveries at which the same service is performed under contract.

Mr. Webber: We offer, Mr. Examiner, as exhibit No. 85, an extract from the exceptions to the Official Classification.

The Witness: With respect to our own operated facilities, I believe I am familiar with the general practices at those stations. With respect to the facilities of the warehouses, [fol. 554] the services of such warehouses are clearly set out in our contract with them. I do not know that it is necessary for me to enlarge upon that. I have, however,

been through the warehouses. I have seen their physical operation. I am familiar with their location.

The Witness: Exhibit 85 contains excerpts from our tariffs, lawfully on file with the Interstate Commerce Commission, showing the manner in which we have provided for the loading and unloading of carload freight at our own facilities at Philadelphia, and it also shows the manner in which we provide for the extension of the same service at certain deliveries of the Pennsylvania Warehousing & Safe Deposit Company.

It will be noted in the lower section of this exhibit that we publish in the tariff, that carload freight handled at warehouses of the Pennsylvania Warehousing & Safe Deposit Company, at their Delaware Avenue Stores, Moro Phillips Stores, 23rd Street Stores and Tobacco Warehouses, will be subject to the same rules and regulations as to loading and unloading as in effect at Pier 62, South Philadelphia, as per our tariffs I. C. C. 20570 and 21212.

All my information as to the history of the arrangements with the Pennsylvania Warehousing & Safe Deposit Company, and what brought it about is hearsay. I have discussed the matter with several of our officials and others. As the contract shows, the original contract, it was made in 1897, at the time the Baltimore & Ohio Railroad was in the hands of receivers. In fact the contract was made by the receivers.

At that time the facilities of the Baltimore & Ohio Railroad were limited, and the receivers were quite anxious to increase the facilities here in some manner, shape or form, [fol. 555] which would enable them to secure a much larger tonnage into and out of Philadelphia than had been handled. They found that there were a number of warehouses reached by the Pennsylvania Railroad and Reading Company which were a very satisfactory adjunct when it came to securing business. They also found that allowances were being made to those warehouses for services performed by them, and it was quite necessary and essential that they make a similar arrangement, and according to my investigation that led up to the contract with the Pennsylvania Warehousing & Safe Deposit Company. The amount of payment to the Pennsylvania Warehousing & Safe Deposit Company for the services performed at the several warehouses that I have mentioned is 50 cents per ton.

The operation of this plan at Philadelphia, in which we perform this service of loading and unloading at warehouses under contracts with these agents, has proven entirely satisfactory to the Baltimore & Ohio Railroad. The addition of these facilities to our own has enabled us to perform a service, or rather to give a service to commercial interests at Philadelphia which we would be unable to furnish otherwise. It has enabled us to meet competition, not only competition with the other rail carriers at Philadelphia, but a certain amount of competition with the boat lines as well. However, there is a certain point where we consider it not advisable to extend facilities. There must be a breaking point somewhere, and we believe our present situation as it exists, takes case of our requirements.

Examiner Brown: 84 and 85 are received and will be marked at this time.

Cross-examination.

[fol. 556] By Mr. Hickey:

These payments that I testified to are not published in any tariff which the Baltimore & Ohio Railroad Company has filed with the Interstate Commerce Commission, in which the Baltimore & Ohio states the amount of these payments in dollars and cents per ton.

Exam. Brown: I suggest that the witness make a definite statement whether or not these payments are or not published in any tariff of the Baltimore & Ohio Railroad?

The Witness: Well, so far as my knowledge goes, they are not published, if that is the answer you want.

J. E. Sands was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Webber:

I am terminal freight agent of the Baltimore & Ohio Railroad Company at Philadelphia. I have been connected with the Baltimore & Ohio about 40 years. I have held numerous

positions in freight station work and the operating department. I have been in Philadelphia seven years as terminal freight agent. As terminal agent I have jurisdiction of all the freight stations in Philadelphia. I think I have heard all the testimony in these proceedings.

[fol. 557] Q. Having before you exhibit No. 84, which Mr. Settle introduced, will you state at what stations shown on the exhibit, operated by the Baltimore & Ohio force, we perform the loading and unloading of carload freight—talking now about our own particular freight stations?

A. All pier stations on the Delaware River Front.

Q. Now will you state how the freight that is handled through those stations is received by the Baltimore & Ohio at Philadelphia—I mean to say how is it consigned, if you know?

A. You mean as to distribution among the stations?

Q. No, I mean as to the billing. Do you see the billing?

A. We handle the billing, yes sir.

Q. How are those shipments that are handled through any of those stations of the Baltimore & Ohio billed? Are there various ways?

A. They are usually billed to the station most suitable to the location of the consignee.

Q. Are they billed, for instance, to John Smith, Philadelphia, or some other way?

A. Usually to the consignee direct.

Q. Now do you have any that come in there to those stations on which you have standing instructions to make deliveries other than at the stations themselves?

A. Well, you mean that come into these stations that require other deliveries?

Q. Yes sir.

[fol. 558] A. Well, that is—usually that would be considered a matter of faulty operation on our own part in distributing our traffic as between the stations.

Q. What I mean, Mr. Sands, is this: You have a shipment one day that comes in for John Smith of Philadelphia, I take it?

A. Usually indicated either Pier 22, 62, 40, Pier 12 North or if we are familiar with the location of the consignee and

where he really desires the traffic handled, it is sent to that station.

Q. Do you have any shipments that come in there on which you have orders from the consignee to deliver at a warehouse?

A. You mean traffic that comes into Philadelphia? Q. Yes, we receive traffic intended for the warehouse.

Q. And is that consigned in care of the warehouse?

A. I would say in 90 per cent of the cases.

Q. Now the freight, first of all, comes into what yard, if it is destined to Philadelphia?

A. Well, it arrives in our break-up yard that we know as East Side.

Q. That is indicated on the map, is it not?

A. Yes sir.

Q. If it is consigned to John Smith, Pier 22, what happens?

A. We break up the train at East Side, distribute the traffic to the various stations, and a shipment consigned in care of Pier 22, is sent to Pier 62, from which point we do our floating up and down the river.

[fol. 559] Q. Is the route over which that would move, indicated on the exhibit?

A. Yes, it is.

Q. Well, is that the heavy black line running from the East Side yard, for example, to the piers?

A. Yes sir.

Q. Assume that you have a shipment that is destined to Philadelphia, consigned to John Smith, and Race Street Station is indicated on the map, what would be the route that that shipment would take?

A. That just happened to be a different classification. At East Side that traffic is pulled up and sent up the Schuylkill River to 24th and Race Street.

We receive carload freight, billed in care of the Pennsylvania Warehousing & Safe Deposit Company, at deliveries that are shown in exhibit No. 85.

It happens at times, that a shipment will come in, consigned to John Smith, Philadelphia, and we receive instructions from John Smith to deliver that shipment at one of the warehouses of the Pennsylvania Warehousing & Safe

Deposit Company. When we have shipments either consigned care of the Pennsylvania Warehousing & Safe Deposit Company, or ordered to the warehouse of that company by the consignee, our first act would be to carry out the instructions of the billing or the order; to send the [fol. 560] traffic to the designated warehouse and follow it up with the revenue billing.

A switching crew would take the car or cars to the designated deliveries. We would send notice of its arrival to the warehouse company. We would follow that with a regular freight bill and submit that to the warehouse too. The freight charge on such bill is collected by the warehouse company and is deposited for the account of the Baltimore & Ohio Railroad.

In the handling of these shipments at our own stations, with respect to the loading and unloading, we have our own employes. We furnish the supervision and the labor at such stations where we unload carload freight or load outbound carload freight. We furnish the supervision and labor and we perform the service, that is to say, the employes enter the cars and unload them.

Freight unloaded is unloaded and put on a—stored on the platform. Notice, of course, is then given to the consignee and delivery made as soon as possible.

For our loading out of a shipment from one of our stations, the operation is the same, except reversed. We accept it on the platform, and use our own labor and supervise it, load it and stow it in the car. Then it is sent out, properly billed.

Q. Now Mr. Sands, in the event that you are called upon to handle all these cars which are going into the Pennsylvania Warehousing & Safe Deposit Company warehouses over your platforms at your own stations, what in your opinion would be the result of that additional service?

[fol. 561] (This question was objected to by Mr. Hickey. Following argument of counsel, the Examiner permitted the witness to answer "for what it was worth.")

A. Well, it would be my opinion, due to the fact that we [fol. 562] have never had to anticipate such a situation, that we would meet with a congestion, because in the oper-

ation of a freight station, it is an active going concern, and freight has to move currently, and any congestion—any surplus amount of freight on the facility naturally retards your operation. There is a certain amount of clearance that we really figure that we have to have for a smooth operation of a freight station, for we clear up daily, and if we were to attempt to handle excess freight, creating a congested condition, it would be a serious matter with us.

Q. Would you have room for storage say for 48 hours at these several facilities, and then to handle the current business?

The Witness: That is rather difficult a question to answer. There are times when we are up to our limit at the present time. There are other times when we are not. I could not very well answer a question of that kind. At Race Street station I would say we are not able to store freight at the present time.

The prompt release of a car that has come in here for unloading is a matter of prime importance, so far as transportation is concerned. From my experience the result of handling shipments by the Pennsylvania Warehousing & Safe Deposit Company has been prompt, average release of cars.

Comparing the release of such shipments with the release of such shipments that are handled at team tracks, my experience has been this, that there is nothing to delay the releasement of cars going into the warehouse. There is not the formality to go through with that there is on cars handled through a team track. As an average there is more prompt release of cars at the warehouse than there is at team tracks.

[fol. 563] I saw exhibit No. 80 and had an opportunity to go through the forms that are included in it. Those forms, bills of lading, and so forth, are similar in language and conditions to the forms used by the Baltimore & Ohio for the same purpose.

Cross-examination.

By Mr. Hickey:

I stated that inbound cars of freight set at warehouses for unloading are released fairly prompt. That has been

our experience on such freight consigned to Mr. Bailey's warehouse and Mr. Gallagher's Warehouse. We don't serve the Terminal Warehouse nor John Wanamaker's Warehouse, nor Sears-Roebuck Warehouse.

Circular No. 799 of the Baltimore & Ohio Railroad Company shows the warehouses which the Baltimore & Ohio serves. It is a publication for that purpose. It is a list of the principal firms and industries in Philadelphia that we serve, either directly, and in some cases indirectly. It is a general circular of information used in our office, for the purpose of reference in locating the firms served. That is a circular that is frequently subject to change, and if kept up to date it does serve a very valuable purpose as a matter of information. It contains information enabling us to make appropriate delivery of the freight.

Inbound carloads of freight consigned for delivery at warehouses of the Pennsylvania Warehousing & Safe Deposit Company are not recorded regularly in our demurrage records, due to the fact that we recognize a warehouse—the Pennsylvania Warehousing & Safe Deposit Company, as an agency through which the traffic is unloaded.

We don't set up any demurrage against shipments to be [fol. 564] delivered at the warehouse of that company.

We do not serve the warehouses of the Philadelphia Warehousing & Cold Storage Company directly. I can not name the customers of the Pennsylvania Warehousing & Safe Deposit Company.

I have not gone around to those customers and ascertained to what points of delivery in the city of Philadelphia they would route their freight in the event that the Pennsylvania Warehousing & Safe Deposit Company discontinued business.

(Witness excused.)

Mr. Webber: Mr. Examiner; I want to offer, as I said I would do at this time, an agreement of 1897 between the Baltimore & Ohio and the receivers of the Baltimore & Ohio and Pennsylvania Warehousing & Safe Deposit Company, supplementary agreement which is the same year, bound with that agreement, and a further agreement of 1904, also made a part of the same document, and the agreement of July 1, 1911, which was merely an extension of the pro-

visions of the original agreement to cover the Delaware Avenue Stores and the Morro Phillips Stores.

Examiner Brown: You are offering two separate exhibits, are you?

Mr. Webber: Yes sir, as exhibits, the original agreement of 1897 and the two agreements bound with it, I would like to have marked exhibit 86, and the agreement of 1911 as exhibit 87.

Mr. Webber: I offer as exhibit 88, the agreement of August 2, 1926.

Examiner Brown: They will be received as defendants' exhibits 86 to 88, inclusive.

Mr. Bikle: Mr. Examiner, at the morning session I think Mr. Hickey or some one suggested that it would be appropriate to supplement exhibit 80 by specimen copies of the [fol. 565] order bill with accompanying documents. I have those copies now for distribution, and with your permission, I will file as exhibit 89.

Examiner Brown: It will be received and marked defendants' exhibit 89.

George M. Richardson was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Glasgow:

I live in Pitman, N. J. I am employed by the Merchants Warehouse Company in Philadelphia. My title is general manager and treasurer. I have been connected with that company about 13 years.

When I first came to that company I was employed as a special assistant to Mr. Miller, the president. I have held the position about four years. It is within the line of my duty to familiarize myself and I am familiar with the method of doing business and handling business, and the contracts between our company and the Pennsylvania Railroad Company.

The Merchants Warehouse Company has been engaged in acting under contract with the Pennsylvania Railroad Company for the delivery and receipt of freight in Philadelphia since 1887. At present at 12 points in the city of

Philadelphia the Merchants Warehouse Company has warehouses, used by it in carrying out the obligations that it has to the Pennsylvania Railroad Company, under the contracts which are now in evidence.

We find it necessary in the conduct of the business under our contract to have so many warehouses, at so many [fol. 566] different points in the city of Philadelphia as a matter of convenience to the consignees of that freight that we handle for the Pennsylvania Railroad Company under our contract. We have one in the Kensington district, and then one nearby in the Shackamaxon district. It is necessary to have a warehouse up there in the Kensington district because patrons of the Pennsylvania Railroad who require their freight delivered in that section, do business there. Otherwise it would require long distance hauls by the consignees or patrons if we did not have a point of delivery at those points.

The distribution of these warehouses all over the city is to promote economic delivery to the patrons of the railroad company of traffic and prevent the long distance haul from points of delivery. That is true also as to the receipt of traffic.

The kind of freight that goes through the several warehouses which we are conducting, and at which freight is delivered to us by the Pennsylvania Railroad Company is a general line of package freight, including canned fruits of various kinds and description, flour, feed, hay and straw. Not much furniture. Occasionally a car of furniture. It is the general run of all package freight that comes into Philadelphia pretty nearly.

When a car comes into Philadelphia on the Pennsylvania Railroad Company and finally reaches one of our warehouses, that car is billed to a consignee in our care. For example, to John Smith, care of Merchants Warehouse Company, designating the warehouse at which the delivery is to be made by the railroad. In other words, the purpose is to designate a warehouse convenient to where John [fol. 567] Smith is located. On a car which comes in billed to John Smith, care of the Merchants Warehouse Company, Shackamaxon Street stores, or other stores, billed that way, we receive the payment from the Pennsylvania Railroad Company for the service we render in accordance with the contract. If that car comes consigned or billed to the

Merchants Warehouse Company, we do not receive payment for any service we may render with regard to that car.

We do not receive a payment from the Pennsylvania Railroad Company for services we may render on any traffic in which the Merchants Warehouse Company has a whole or a part interest in the traffic.

I have here three typical billings that illustrate how those cars come to us, and the form of the billing.

Examiner Brown: They will be assigned interveners' exhibits Nos. 90, 91 and 92.

If we take a car coming into one of our warehouses, a full car, in which the billing is John Smith, care of Merchants Warehouse Company, and that car is received at our warehouse, we give the consignee named in the billing notice of the arrival of that car.

After it has been unloaded and stored by us as the agent of the Pennsylvania Railroad, under the terms of our contract, we send a proper notice to the consignee indicated on that billing. If the information we have is that the entire contents of that car is to be delivered to the man whose name appears in the billing, and to nobody else, when that car arrives at the platform of our warehouse we first make a careful note of the condition of the seals, and keep a copy of that seal record. The seals are then broken, the car [fol. 568] doors are opened, and an unloading crew and a checker will take those goods out of that car, package by package. The checker will keep a careful record of the condition of each package as it is taken out of the car, and loaded on what we call a small buggy or truck. We then transfer that freight to some convenient place in the warehouse. We there pile it, separate it for our own convenience.

Where the full carload is for one man and our information is that nobody else has any interest in it, if there was an assortment, we would separate it; that one man might have two or three brands in that car and we separate it into brands or marks.

We make report to the Pennsylvania Railroad Company, under our contract, as to the condition in which the goods are when they are taken out of the car on to our platform. It is necessary to examine each package in order to make

that report, otherwise we would not know. We put that freight in our warehouse at some convenient point, piled up, separated into brands or markings and then we notify the consignee that it is there for him or his orders.

It will remain at that point in the warehouse where we place it until delivery is accomplished. It remains at that point 48 hours, not including day of arrival, Sundays or legal holidays, before there is any storage charge that is made against the consignee. That is done in accordance with the contract that we have with the Pennsylvania Railroad Company. We store it free for 48 hours, after we have placed it in the warehouse. At the end of 48 hours, in case there is no demand on us for the immediate delivery to the shipper or to the consignee, that commodity stays there and [fol. 569] is held subject to our tariff charges as a warehouseman. It stays there for account of the consignee. It remains there at his convenience to accept the delivery. When he asks delivery, we would take those goods at the pile, pile them on little trucks or buggies, and deliver to what we would call the sill of the warehouse. That is where the truck is backed up which the consignee sends to receive the freight; we make a tail-board delivery.

For the services which we perform between the point that we receive the traffic into our warehouse and the point that it is delivered out to the tail-board of the truck if it is delivered when in the free time, we get no compensation, except the payment made to us for services rendered, by the Pennsylvania Railroad, namely, 50 cents a ton on some classes and 35 cents per ton on others. That is set forth in the contract.

Any other compensation which we get after the 48 hours is a question between us, or contract between us—our company—and the consignee, for the storage of it.

Suppose a car comes in to one of our warehouses, consigned to John Smith, care of the Merchants Warehouse Company, and after that car is unloaded we are informed in some way that parts of that commodity or volume in the car are for one man, to be delivered to one man, and part to be delivered to another, or to four, five, six or seven or 10 different people, we would and could only get the information that there are others than John Smith, as an illustration, interested in the commodity in that car,

from the consignee shown on the billing. We get the information from the consignee. We might get it in the form of telephone information, which is confirmed in writing, but as a rule we will receive written orders, either direct from [fol. 570] the consignee or presented by his driver.

Exhibits 90, 91 and 92 on local freight waybill to which are attached cards showing the classification of the commodity in the car are orders from the consignee named. They are typical shipments.

Mr. Glasgow: I offer as exhibit No. 90, Pennsylvania Railroad local freight waybill, in which the consignee appears A. E. Turner Company, Merchants Warehouse Company, R. F. S., Philadelphia, Pa., to which is attached a notice dated 5/23/28 from the Merchants Warehouse Company to A. E. Turner & Company, giving a report of the contents of the car, by cases, and the condition of the contents of the car, and the marks which are upon the cases in the car; and also attached to the waybill are eight orders in writing, dated 5/24/28, from A. E. Turner & Company, to the Merchants River Front Stores Warehouse, directing the person to whom the warehouse company was to deliver the goods contained in the car.

I offer as interveners' exhibit 91, Pennsylvania Railroad local freight waybill, in which the consignees appear to be Jessup & Roberts, care Merchants Warehouse Company, Delaware Avenue-Front Street, R. F. S. Philadelphia, to which are attached, just as to exhibit No. 90, the detailed notice to Jessup & Roberts as to the contents of the car, and nine orders in writing from Jessup & Roberts, directing the Merchants Warehouse Company to what persons to deliver the contents of the car.

I offer interveners' exhibit No. 92, which is Pennsylvania Railroad local freight waybill, upon which the consignee appears as Canada Dry Gingerale, care Merchants Warehouse Company, Delaware and Chestnut, and attached to the same is notice to the consignee Canada Dry Gingerale Company, as to the detailed contents of the car, and also at-
[fol. 571] tached to it five orders in writing from the Canada Dry Gingerale, Inc., directing the Merchants Warehouse Company to what persons to deliver the contents of the car.

The Witness: Exhibit No. 90 is a typical waybill as to the consignee and the contents of their cars that come to our warehouse from the Pennsylvania Railroad. Attached to that is a detailed statement, or a statement in writing as to the number of cases in that car and the contents of the cases. For illustration, the first item is 200 cases Perfection whole beets No. 10, and under head of "Remarks" is the following:

"MKD. Kern Prince" That means when our unloading crew unloaded those goods—unloaded that car, they found 200 cases of No. 10 beets marked Kern Prince & Company. Of course, we know that those marks "Kern Prince & Company" are put on those packages by the shipper, so that his consignee, A. E. Turner & Company, would know what packages to direct us to deliver on their order.

After we make up this statement, which follows along as to each group of cases, sliced beets and whole beets and other commodities, and the persons—and showing the marks, we send a notice to the consignee named in the waybill as to what the contents of the car was, in the form in which it is shown in exhibit No. 90, which is a verbatim copy. That notice also shows the condition of the packages in the car, as we found them upon unloading. A notation thereon shows that two cases of C. & C. sliced beets, marked A. Salus & Son, were swelled and leaking. That means we found two cases in a damaged condition of that particular mark and brand. We send to the consignee a notice on each car as follows:

[fol. 572] "We will insure this merchandise for two days at a valuation of $3,000. If not removed within two days, it will be stored, subject to tariff charges, and it will then be at the owner's risk as to loss or damage by fire, unless insured by the owner through this company." That notice appears on all notices of arrival. The only exception would be that the amount of insurance would change.

We give to the Pennsylvania Railroad Company, after we have unloaded the car, a notice or report as to the condition of the seals and as to the condition in which the packages are when we unload them. We do that every day at every warehouse on every shipment.

When a car comes in as in exhibit 90, marked with eight or more different markings on it, as soon as that car gets

to the platform, we break the seals of the car. We inspect the seals first then we unload that car. We put the commodities when they take them out of the car on a truck, then we move each truck as it comes out of the car to some convenient place in the warehouse, and there pile the goods. We put it wherever it is most convenient for us. The first platform might be congested, and it might be necessary, if we would assume that any portion of those goods would remain in store after the expiration of that free period, we would have the advantage of the goods being placed permanently in the store, at some convenient spot for us in the warehouse, and thus save us the expense of moving it or rehandling it.

If we have knowledge that that is certain to be taken out by the consignee within the 48 hours, we place it in the warehouse at the most convenient place for ourselves in order to make expeditious delivery.

After we get those little trucks on which we pile the goods [fol. 573] into the warehouse, we would separate the packages as to marks and sizes, and pile them in the warehouse for our convenience. For instance, as to exhibit '90, our men get 200 cases out of there, Perfection whole beets No. 10, marked Kern Prince & Company, and pile them in one pile, and 100 cases of C. & C. sliced beets No. 10, marked A. Salus & Company and pile them in another pile. That is all the way through until we have piled all the commodities in that car.

Now, the first of the wrrit-en orders in exhibit 90 is addressed to our company and it says—this ordered us—deliver to Almar Stores Company or order, 100 C. & C. sliced beets, 100 Perfection beets—whole beets. That order may come direct from Mr. Turner, or it might be presented by Salus & Company's driver, on Salus & Company's Almar Stores. However, the order in writing from Turner is either directly to us, from him directly, or by the man who drives up there with a truck to receive the beets. When we get that order, we make delivery. The order is prsented first to our general office, and the record is checked to see if it is in keeping, and checks with the billing of the car, and then we issue what we call a written authority, or warehouse order, directing the foreman to make that delivery.

That driver is given that warehouse authority and he gives it to the foreman after he backs his team into the platform. In other words, we deliver the order to the foreman of our warehouse, to deliver the beets called for in the written order of Turner to the fellow that presented that order.

The foreman goes into the warehouse to the pile in which the marks are Almar Stores and he or men under his direction take out from the part marked Almar Stores the amount called for by the order. He makes tailboard deliv-
[fol. 574] ery, from that pile marked Almar Stores. That is all the way through all of the shipments that appear in that car as it is reported here and it is all carried out the same way. At the end of two days if we have not received orders and delivered to the tailboard of the truck all of the shipment contained in that car, the balance of it is held right there where it is originally stored, subject to the order of that consignee. And in accordance with the notice, it goes on storage as a warehouseman. We have to examine each package as it is unloaded, to determine its condition. They are examined as they are taken from the car and put on the truck, and upstairs they are separated and piled according to the classification as to marks upon them to which I have referred.

Nobody pays us for the service of separating them into piles, we are not required to. We do it is a matter of our own convenience. It would be an accommodation to our patrons of our warehouse in this way: When we don't make a charge, it is to their advantage, of course. When we separate it that way, there is an anticipation that part of it may thereafter go into storage. It not only becomes our convenience to do it that way, but also for the further reason if we would pile the contents of the car together—an assorted car of canned fruits, as an illustration, the following day whoever the consignee might be would send us an order, directing us to deliver 200 cases of that car—if we separate that car when we unload it, we save ourselves the expense of breaking the pile and thus being able to make delivery in accordance with the terms of our contract with the Pennsylvania Railroad.

In other words, if Mr. Turner is going to order out any of
[fol. 575] that contents of the car for delivery, we in order to honor his order, would either have to separate it when we unloaded the car, or separate it when we got the order.

The Pennsylvania Railroad Company under its contract with us does not pay us for that service of separating and we are not required under that contract to make that separation. But we do it for our own convenience.

The service we render to the Pennsylvania Railroad Company, for the Pennsylvania Railroad Company, for which we are paid the 50 cents a ton or the 35 cents a ton provided in the contract is that when the Pennsylvania Railroad places a car on the tracks, we examine the seals; we break them; we keep a careful record of the condition of those seals; we unload that freight; we keep a careful check of its contents and condition; we store that freight for the account of the Pennsylvania Railroad for a period of 48 hours. We assume responsibility for its care and custody. We make delivery and we insure it during that free period.

We make delivery in accordance with the terms of our contract, if the consignee calls for the freight within the free time as prescribed by the tariffs.

For the payment which we receive from the Pennsylvania Railroad Company for the traffic handled, of which exhibits 90, 91 and 92 are typical instances, as well as the carloads that I have referred to, in which the entire contents go to one person—for that compensation of 50 cents or 35 cents, our company renders the services which I have indicated, pays for the insurance which I have indicated, and furnishes to the Pennsylvania Railroad Company for its purpose, [fol. 576] storage during the 48 hours, the space and the facilities I have detailed in our warehouse.

In connection with claims for damage against the Pennsylvania Railroad Company on account of damage to the commodities in the cars that come to our warehouse, or their condition, we render any service to the Pennsylvania Railroad Company in connection with claims that are brought on such damage claims, we file claim papers covering that. For instance, take on exhibit 90, two cases swelled and leaking.

On exhibit 91, one case of red kidney beans received with only 16 tins in the case.

No. 92, Canada Dry Gingerale, 33 cans damaged, reconditioned to a loss of eight cases.

We report all of that to the Pennsylvania Railroad the day the car is unloaded and if any damage claims were filed

with regard to those items we discharge service to the Pennsylvania Railroad under our contract.

First, this is something I overlooked: When that car is unloaded, our coopers would try to recondition these packages and place them in condition where the consignee would be willing to accept delivery. In a great many cases we are able to reduce claims on canned foods to a minimum. We make no charge for the service of those coopers.

We are not required to do it under our contract with the Pennsylvania Railroad. We feel that is an obligation upon us. Now we make this report, as I stated, to the railroad company. In due course, if a claim is filed by either the consignee or the shipper, that file of claim papers would come back to us for verification, and we invariably attach copies of the original unloading records, reports as to why [fol. 577] we thought the damage occurred and so on.

We never file claims in our own name on goods consigned to our warehouse, in care of our warehouse.

When that car comes and the freight has not been paid at initial point, the Pennsylvania Railroad collects the freight on these cars which is due to the Pennsylvania Railroad Company direct from the consignees, freight charges assessed on cars consigned to parties on what they call their credit accommodation list. In the event that a consignee is not on their credit accommodation list, they may collect direct, or they may direct us to hold that car, pending payment of the freight charges.

We sometimes collect the freight charges for the Pennsylvania Railroad Company and account to the Pennsylvania Railroad for the collection. The amount of freight we collect for the Pennsylvania Railroad Company as its agent on account to them for it is so small as to be negligible. As an illustration, Mr. Funck, I think, testified that he had made an investigation, and he made a report as to cars for a period September 1st to September 22nd. I think he testified to that fact yesterday. I had no opportunity to make a check all over the city, but I did check one of our very big warehouses along the River Front, I should have stated, and I found that in all that time we only collected the freight charges on two cars, of all that traffic. The traffic was approximately 700 cars. For the Pennsylvania Railroad we collected the freight on two.

We did that by reason of our appointment under the contract we have with the Pennsylvania Railroad Company. [fol. 578] That is a contract obligation.

Q. Now, Mr. Richardson, some reference has been made by counsel for the complainants here about your having—the warehouse company having been paid the amounts referred to in the contract with the Merchants Warehouse Company, upon some cars of freight which were unloaded by the warehouse company, on tracks not at the warehouse company, is that correct?

Mr. Hickey: I ask that the question be corrected. I did not say they were unloaded by the warehouse company. If you leave out the words "The warehouse company".

Q. Leave out by the warehouse company, if he wants to, and I will prove whether it was done by the warehouse company, so unloaded on the tracks. Is it a fact that you were paid on some cars unloaded on tracks?

A. Yes, sir. They were unloaded by our people.

Q. How did your people get to unloading on the tracks—how did it happen?

A. Well, take one example that I know of. I think the Kensington district was mentioned yesterday. All of those warehouses are served by the Pennsylvania Railroad tracks that you must pass over to reach the l. c. l. station of the Pennsylvania Railroad. As an illustration, Shackamaxon Warehouse, it has a siding capacity, I think, of five or six cars, according to the length of the car. After those tracks are once set up in the morning and we have our unloading plates down, the consignees may come and ask us to make delivery of a car it is impossible for us to place at our warehouse siding just at that time, without breaking up [fol. 579] the entire operation.

It is impossible for us to arrange for the Pennsylvania to break that track and put another car in, on account of the difficulty of shifting in that district. Therefore, we have detailed men from the warehouse to go out into the yard and take a portion or all of the car, and make tailboard delivery to the consignee.

We make there the inspection that is necessary to make upon breaking the seals of the car exactly the same as if it had been in the warehouse. The work is exactly the same

as if it had been in the car except that it does not pass on the platform of the warehouse.

If we deliver only part of the car in the yard, instantly that the delivery was accomplished of the portion of the car which we actually did deliver, we would close those doors, seal them and the railroad would place that car at a convenient time during the day or following day at our warehouse. And the remainder of the car would be handled through the warehouse, just in the method that I have gone through.

We send a bill to the Pennsylvania Railroad Company for our contract account for the services we render in unloading the car at the yard under the circumstances and conditions I have detailed, on the cars that I have indicated which were unloaded in the yard. We collected money on some cars under the conditions I have outlined.

Subsequent to that time, the Pennsylvania Railroad Company made a further investigation of the billing which we had made to them for the cars—for the services with the result that they billed all those charges back to us and we paid the bill. As a matter of fact, the Pennsylvania Railroad Company took the position with us that the tariffs [fol. 580] were not broad enough to cover that, and required us to pay the money back.

Under the terms of our contract, we are required to receive freight which is delivered to us under the terms of our contract with the Pennsylvania Railroad Company, for loading and shipping over that line. That traffic is received by us at what we call the sill or receiving doors of the warehouse. The shippers would bring it there with their trucks. They usually bring shipping papers and direct us to load that freight. The shippers make out the bills of lading and they present that to us along with the commodity or traffic that is to be shipped. It might not always come with the first load, but come in the day's business. Then when we get the traffic on our platform and we get the shipping instructions, and the bill of lading prepared by the shipper or consignor, we would take that freight off the platform and place it in a car, properly stow it. We would arrange for the car to be spotted through the usual channels.

We would make that arrangement with the agent hav-

ing jurisdiction—agent of the Pennsylvania Railroad. Then when the car is spotted at the siding at our warehouse, we would load that freight, and properly stow it, seal the car, take the bill of lading to the agent having jurisdiction, who would sign it; we would then deliver the signed lading to the shipper.

We keep a very careful tally of the commodity to see whether it corresponds with the bill of lading. If it was damaged freight we would make a report of it. We make a report to the Pennsylvania Railroad Company as to the condition of the freight when we receive it and put it in the car.

[fol. 581] The notation on the lading would indicate that. That is done every day. For the service which we render in receiving it, checking it, examining it, loading it and the storage just prior to loading, reporting and sealing the cars, we get a compensation from the Pennsylvania Railroad.

Of course the use of our facilities are included in that contract, not only for the actual work we do, but the use of the facilities that we have there in the form of our warehouse. That compensation is provided for under the contract. That compensation is 50 cents per ton, at some locations; and 35 cents at other locations.

We do not get any compensation from the Pennsylvania Railroad Company for our services in connection with traffic which may be billed to the Merchants Warehouse Company, Philadelphia, or on traffic in which our company has any interest whatsoever.

During the month of July, which was the time this case was called for hearing in Washington, I made or had made a very careful survey—very careful check of the records at four of our warehouses, with a view of determining what percentage of the total traffic handled was delivered within the 48 hours free time. I found that we delivered in some instances, at some locations, 35 per cent of all the inbound tonnage within the free time; at other locations, 75 per cent, including outbound tonnage—the total tonnage handled inbound and outbound.

[fol. 582] Mr. Hickey: If the Examiner please, I object to all this testimony about the free time, and move that it be stricken out, on the grounds that Mr. Glasgow has not established a certain or definite free time, which he or the

witness may characterize as the free time. There cannot be any free time in these privately operated warehouses.

Exam. Brown: Explain to the witness what you mean.

By Mr. Glasgow:

Q. When I speak about free time,—I thought I was talking about something that everybody knew. I mean when I speak of free time and you speak of free time, the 48 hours which is provided, that the traffic will be held by the Pennsylvania Railroad Company at its terminals, without any additional charge over and above the freight rate.

A. And which free time is provided for in these contracts.

Q. And is that the free time referred to in these notices that you give to the consignee, that the merchandise will remain stored with you, without an additional charge, for two days?

A. Yes sir.

Mr. Hickey: I do not want it to appear that I withdraw my objection after what Mr. Glasgow said. My position is that when the Pennsylvania Railroad Company delivers a carload of goods to the only concern that it can deliver it to, there can be no free time. There is absolutely no free time, and my position is there is no free time in this case.

Exam. Brown: Your remarks appear of record. That is one of the points to be argued in the brief. This evidence [fol. 583] will be received, subject to your objection, with the privilege on your part to argue the point in your briefs, if you wish.

Mr. Glasgow: I just want to remark that free time, I understand, to be time in which the commodity will remain in the custody of the carrier or its agent, without any additional pay over and above the freight rate or demurrage.

Exam. Brown: That is a matter to be argued out in the brief.

Mr. Glasgow: I say I understand that to be free time. Mr. Hickey says there cannot be free time, and my reply to that is as a fact there is free time.

[fol. 584] By Mr. Glasgow:

Q. Now, some complaint was made, as I understand, by Mr. Anderson, at Washington, that the millers had no notice

when flour that his clients were interested in, went into storage with you at your storage tariff rate.

Mr. Hickey: I object to Mr. Anderson's testimony being described that way.

Q. Have you adopted any method since that time of giving the millers notice when it comes into your warehouse for storage with you under the tariff rates as a warehouseman? When I say millers, I mean the consignors or shippers of the flour.

A. Mr. Glasgow, we haven't actually sent any notice to any shipper or consignor, but that question is under consideration, and has not been finally passed upon. We are quite willing to send any notice, so far as we have the legal right to forward that notice, that will give the shippers or consignees any information they want about the status of that shipment.

In connection with the handling of the traffic at the several warehouses of our company, to which I have referred. There is nothing done by us, except at the request or under our obligation to the carrier under our contract, or at the request of the consignee named in the billing.

By Examiner Brown:

Q. Are the services rendered by the Merchants Warehouse Company any different than the services rendered by James Gallagher, and the Northeast Warehouse Company, Walter A. Bailey Terminal Warehouse Company, or the other complainants in this case? If so, I wish you would draw a distinction if you can.

[fol. 585] A. Mr. Examiner, the representatives of those warehouse companies, especially Mr. Sullivan, testified to a lot of things that he does that we don't know anything about.

Q. Well, for example?

A. As I recall his testimony, he operated sales departments; he rendered a lot of services for consignees and for shippers that we do not do. I have related to you exactly what we do. What they do, I cannot tell.

Q. Do you know within your knowledge whether or not the services you render these shippers are not rendered by those other companies?

A. I cannot answer that.

There is certain space in our warehouse which is leased to certain people in Philadelphia, for a term or for a year, or for a period. Probably 15 or 20 tenants have leases or space in our warehouses—probably 20 in all of them together—scattered over all of them. Those people are constant patrons of our warehouse for storage.

As a matter of policy we at times have agreed to reserve certain space in our warehouses that we do not need to perform the services required by us under this contract as agent of the Pennsylvania Railroad Company, and we lease that space to desirable patrons. That is not an unusual thing with warehouse companies—it is part of our business, and they pay an aggregate price for such space as we allot to them, and which space we allot on the basis to not interfere with the service we have to perform for the Pennsylvania Railroad. We allow them to put up a sign, showing that they have space there. We allocate space to them, isolated from the space which we operate as an agency of [fol. 586] the Pennsylvania Railroad. We have nothing to do with it after that.

Philadelphia, Pa.,
October 10, 1928—10:00 o'clock A. M.

Met pursuant to adjournment before Examiner Brown.
Appearances: Same as before.

[fol. 587] Mr. Glasgow: I have the complete list of the stockholders of the Merchants Warehouse Company. I submit that to you for your use, or for the Commission. I do not think Mr. Hickey or the competitors of this company ought to have a list of its stockholders. I am raising no objection, but the Commission, having it, I think it will be clearly recognized that the company's stock list it is not desirable should be a matter of public record or public property.

Examiner Brown: If you do not care——

Mr. Glasgow: I will give it to you, and for the Commission's use, if desired.

Examiner Brown: If you do not care to file that stock list as an exhibit, serving notice on the parties here, I do not believe it would be well to have it in the record. How-

ever, would you object to stating for the record the majority control of the company?

Mr. Glasgow: I would state on the record that there is no majority control, but that the largest stockholder—individual stockholder is the Pennsylvania Railroad Company, having 1240 shares out of a total of 6,942 shares. I will say further, that there are four pages of lists of stockholders, running from one share up to 773 shares held by one man.

Examiner Brown: Are there any other carriers holding stock in this company?

Mr. Glasgow: I think not, sir. I don't know that Mr. Hickey wants it, but he will recognize immediately that we don't like this to be public property.

Mr. Hickey: I have not asked for it.

[fol. 588] Examiner Brown: The record is clear enough in that respect. I will not ask you to file that list, inasmuch as you do not wish to serve notice on the parties.

Mr. Glasgow: Now let me state of record, Mr. Examiner, that if you or the Commission in the consideration of this case deem it desirable at any time to have a complete list of the stockholders, with any information as to the identity of any stockholder thereon, upon notice to me or to the company, it will be immediately furnished.

Examiner Brown: I might say in response to that statement, that nothing will be considered in this case which is not a formal part of the record in this proceeding.

Examiner Brown: The exhibits offered by this witness will be received as interveners' exhibits Nos. 90 to 92, inclusive.

GEORGE M. RICHARDSON resumed.

Cross-examination.

By Mr. Hickey:

As to how many of the warehouses of the Merchants Warehouse Company are owned by the Pennsylvania Railroad Company or its subsidiaries. I will name them having in mind those where the railroad company owns both land and structures, and those cases where it may own the land or the structures, but not both:

The Kensington warehouse, ground and property, is owned by the Pennsylvania Railroad Company.

Shackamaxon Stores, the ground is owned by the Pennsylvania Railroad Company, the property by the Merchants Warehouse. The warehouse company don't own the tracks that serve the warehouse.

Federal Stores, ground and property and facilities, [fol. 589] owned by the Pennsylvania Railroad.

15th and Carpenter, ground, building and facilities owned by the Pennsylvania Railroad.

West Pennsylvania, ground, buildings and facilities owned by the Pennsylvania Railroad.

I mean, when I say facilities, the tracks. That is what I understood Mr. Hickey to say—he said eyerything above ground. I mean the tracks.

When I say West Philadelphia, that is a good illustration. The Pennsylvania Railroad Company own the building, and so forth; it owns the sidings; it owns the platforms; it owns every physical thing in connection with that property.

I have described five separate properties. As to how many separate properties the Merchants Warehouse Company operates as warehouses, we designate the operation as 12 properties.

We don't own all the properties we operate. We lease some of them, but all of the sidings that serve all the warehouses—I say sidings—I mean railroad tracks,—are owned and maintained by the Pennsylvania Railroad to the best of my knowledge.

I think the division is 5 and 7, either owned by the Pennsylvania Railroad or owned by us or leased by us. That means that the Pennsylvania Railroad Company does not own the buildings or the land in the other seven that I have not mentioned.

I stated my position in the service of the Merchants Warehouse Company. I am also a member of the executive counsel of the Philadelphia Board of Trade, intervening in this case. I am also on its committee on foreign and coastwise commerce.

[fol. 590] Mr. Phillip Godley is not employed in the service of the Merchants Warehouse Company and he was at no time in the service of the Merchants Warehouse Company.

I am also vice president of the Commercial Exchange,

Mr. C. Herbert Bell is not and never was at any time vice president of the Merchants Warehouse Company. He is not on the Board of Directors of that company and never held any official position with that company and never was in its service at any time.

I was speaking of the freight charges on freight delivered at warehouses of the Merchants Warehouse Company, and the charges collected by the Pennsylvania Railroad on those shipments, and the charges collected by the Merchants Warehouse Company on some of those shipments. I didn't give any consideration to the inbound shipments billed prepaid. I would not attempt to give an estimate of the proportion of the inbound shipments that come billed prepaid without reference to the billings. I have not looked into it.

We have 16 or 20 tenants. I am not sure, and that, of course, is subject to verification if it is important. All of these tenants we leased specified space to in the individual warehouses of the Merchants Warehouse Company.

We present some papers and writings to the Pennsylvania Railroad Company, every month, for this compensation or payment on inbound shipments to the Merchants Warehouse Company. We present it once a month. We call that paper writing a bill rendered for the service of unloading and for all services with respect to the unloading, the care and custody, the checking and the delivery of freight, as provided by our contract.

[fol. 591] As to what I call the entries on that paper writing and whether they are charges, or claims, or allowances, or what, I think the bill is in evidence. I don't recall the exact wording. I don't characterize them in any way. I don't recall what is on one of the bills. I cannot identify the entries on that bill in any manner without reference to the paper. Ever since I have been with the company, which is a period of 13 or 14 years, to my knowledge, those bills are prepared. I cannot repeat the first entry that appears on those bills.

We render a bill for services honestly rendered, with respect to the receipt and care and custody, the delivery of freight to the consignees shown on the billing, under our contracts with the Pennsylvania Railroad. They are bills representing, as I have stated, compensation to which we

are entitled under our contracts with the Pennsylvania Railroad, for services honestly rendered.

My estimate of the aggregate of those bills for the year 1927 is approximately $200,000. Possibly that is just a little in excess of the figures. That covers all the warehouses, the Merchants Warehouse, all of our operations, in one year, 1927.

In our Federal Stores, we lease space to a tenant named the Vacuum Oil Company. On inbound shipments for the Vacuum Oil Company, after the car is opened, and after we have made a careful record of the condition of the seals, an unloading crew would be detailed to take those packages out of that car. They would be put on trucks or buggies, and then either delivered to the space which is isolated from that part of the warehouse to be utilized for the storage of freight as agent of the Pennsylvania Railroad Company, or we would store it in what we call space reserved [fol. 592] for consignees, known as the general public, and hold it subject to their orders covering distribution or delivery.

The Williamsport Wire Rope Company is another one of our tenants and the Rossville Company. They both have a very small amount of space.

John B. Ashtell & Company is a tenant of the West Philadelphia warehouse, but I would say that the character of service is entirely different. John B. Ashtell & Company receive freight that I think is classified as bulk freight only, and under the tariffs of the Pennsylvania Railroad they don't undertake to unload that class of traffic in Philadelphia, and necessarily we would not be required to unload that freight and we would not receive any compensation from the railroad.

The service we perform is anything that Ashtell would employ us to perform. We might unload the car, and we might not. However, we would of course keep a record of that car, its placement on the siding, and the date it was placed, and when it was unloaded, and submit that report to the Pennsylvania Railroad.

The services from the time the cars are unloaded, when we do unload the cars, are that we would deliver the freight in the space as and when directed by Mr. Ashtell or his representative. I would not say similar to my description

of placing it in space for the Vacuum Oil Company. The difference is:

In the Vacuum Oil Company we would make delivery on trucks to their space. In other words, we would take that little truck and bring it up to the elevator and there at that space we would make that delivery at that man's space. In West Philadelphia we feel that we would have the right to [fol. 593] go in a space and pile or do anything that man wants us to do that he pays us for.

At our Kenilworth Stores, C. G. Justice Company is one of our tenants. They have a small amount of space. We don't do anything for that tenant unless he directs us to store a shipment consigned to him in that section of the warehouse which is reserved for consignees we know as the general public.

Q. Will you describe what you do on the freight, from the time you take it out of the car, until you place it on the space for the C. G. Justice Company, or otherwise dispose of it?

A. From the time the car is placed on the Pennsylvania Railroad tracks that serve our warehouse?

Q. Yes.

A. We would break the seals after making a careful note of their condition. We would detail men to unload that car. The packages would be taken out of the car, a careful record kept of that contents and condition. They would be placed on buggies and then transferred to the space we have under contract as tenants with them, or we would store and pile that shipment in that portion of our warehouse reserved for the general public, and hold that shipment subject to their orders covering delivery.

I regularly solicit business for the Merchants Warehouse Company, that is my job, and I solicit these leasing arrangements referred to—that is the arrangement with these tenants. I would assume that responsibility subject, of course, to the approval of our Board of Directors and executive officers.

[fol. 594] Sometimes I enter into leases or agreements in writing as to the space they occupy, sometimes not. I have in mind now the conditions under which they occupy this leased space, and I know the character of the business they

conduct, if they do conduct any business in this leased space.

The business the Justice Company conducts there is receiving shipments of tomatoes—green tomatoes, sometimes they originate in California, sometimes in old Mexico, and then as the season advances and changes, the movement is from nearer points, sometimes south, sometimes Arkansas. They bring those tomatoes to Philadelphia, and after we make the delivery of the packages to them, their people in some way separate them and take care of them,—ripen them. That is all we know about that. They don't can them there—I am sure of that. When it comes in some part of it may be green. They call it fruit. They make delivery themselves to their customers in Philadelphia. Trucks come to the warehouse. They may be out of town customers. I assume they are.

At our River Front Stores we lease space to the Sherwin-Williams Company. That company is engaged in the paint business. They don't have a great deal of space. They use part of it, I think, to store the freight we deliver to them as agents of the Pennsylvania Railroad, and they use, I think, part of the space for the purpose of handling their correspondence, meeting their salesmen, accounting and work of that kind.

Q. Mr. Richardson, why have you repeatedly in your answers to me inserted that statement "as agents of the Pennsylvania Railroad Company?"

The Witness: That is an accurate statement of fact. [fol. 595] That is exactly what we do.

There is a man named Godley who is employed by the Merchants Warehouse Company. His name is Francis D. Godley.

By Mr. Campbell:

Q. Assuming that a shipment of flour was shipped by a miller on uniform order bill of lading, similar to the one that Mr. Bikle presented here—that is, the blank similar to the one he presented here, and that shipment, say, the name of the concern was John Smith, to the order of themselves, notify John Doe, Philadelphia, care of Merchants Warehouse Company, and that shipment was received at one of your warehouses in Philadelphia, what would you do with

that shipment, the same as you would do with any other shipment?

A. After that shipment was placed on the Pennsylvania Railroad tracks that serve our warehouse, our obligation to the railroad under the contract would be to unload that car, to keep a careful check of its contents and condition, make that report to the railroad, store that flour for a period of 48 hours, insure it, notify the party to whom the delivery should be made, and then hold the car subject to any lien for freight charges which the Pennsylvania Railroad might have, and subject to the surrender of the original order bill of lading, properly endorsed.

If that car were delivered to the notify party within 24 hours after the date of its arrival, there would be no storage charge on it from our company and during that time we would hold that as agent of the Pennsylvania Railroad Company, according to my understanding. After the 24 hour period we would continue to hold it in the same capacity for a further period of 24 hours, which does not include date of arrival, Sundays or legal holidays.

[fol. 596] After the so-called free time has expired, we are holding that car as a warehouseman for account of the owner, subject to a lien of the Pennsylvania Railroad for any freight charges and the surrender of the original order bill of lading, properly endorsed. I would characterize the owner of that car as the man who had that original order bill of lading. I said after the 48 hour time we hold it for the owner—that is, we store it for the owner. The owner would be the man who owned it, or who at the time had the title to this uniform bill of lading. That is the man I would recognize as the owner. We would not have any way of knowing where that bill of lading was, until it was filed with us, but after this 48 hours time, we do not hold it for the railroad company, we hold it for the owner, as warehousemen.

Of course, we recognize the owner as the notify party, the party to whom we understand delivery is to be made according to that billing. We hold it subject to the order of the owner, whoever that may be,—the notify party. We notify the party indicated on the billing we receive to be the notify party.

Totally aside from our contractual relationship with the railroad company we are a public warehouse. We are sub-

ject to whatever laws there are regarding public warehouses.

Assuming one of these shipments gets in our warehouse after the 48 hour period, or whatever length of time, we are required under the law to hold that freight a reasonable length of time. In Pennsylvania I think the reasonable time is generally to be assumed one year, and then we must not make any disposition—any sale of that shipment, until everybody indicated on the billing who might have a bene-
[fol. 597] ficial interest, is notified, and after advertising properly in accordance with the law.

Redirect examination.

By Mr. Glasgow:

Five of these warehouses—practically all five of these warehouses—the ground on which the building is located—the building, the tracks and the platforms where the freight is received, belong to and are property of the Pennsylvania Railroad. I think those warehouses were built by the Pennsylvania Railroad, but I am not sure of some of the older ones. They are all owned by that company and the property is owned by the company, just as its freight stations are owned by the company, and the only difference is that we, under contract, perform the services I have indicated for the Pennsylvania Railroad.

The others are either owned by us for the performance of this service, or we lease them from somebody else who owns them, for the performance of this service.

On the five properties owned by the Pennsylvania Railroad Company, the Merchants Warehouse Company pays to the railway company a rental for the use of them as provided by the contracts which are in this record.

By Mr. Hickey:

Q. I show you a list of names. (Later offered as exhibit 99.) Do you recognize those names as tenants of the Merchants Warehouse Company?

A. I recognize all the names on this list you have just shown me, as tenants of the Merchants Warehouse Company, except William A. Huey, who leases office space only at our West Philadelphia Warehouse.

Mr. A. Goldman occupies space that we have under contract with him. That is isolated entirely from that section of our warehouse which we utilize as space for the Penn- [fol. 598] sylvania Railroad under the provisions of our contract.

Livingstone Brothers occupy office space in our West Philadelphia warehouse and also have a small locker space, 25 feet by 25 feet, which they utilize for the handling of small broken lots of their products.

WARREN T. JUSTICE was thereupon recalled as a witness and, being first previously sworn, further testified as follows:

Direct examination.

By Mr. Barnes:

I have been connected with the Pennsylvania Warehousing & Safe Deposit Company for a period of 25 years. For the sake of convenience, I refer to our company as the Pennsylvania Warehousing Company. My present position with the company is general superintendent, and as general superintendent, I oversee the operation of all the warehouses of the company.

This is a map of Philadelphia and vicinity, and shows the location of the warehouses of the Pennsylvania Warehouse Company.

I am familiar with the terms and provisions of the contracts between our company and the Baltimore & Ohio Railroad Company, and between our company and the Reading Company with respect to the terminal services.

These contracts antedate my connection with the company which is a period of 25 years.

It has been a part of my duties as the general superintendent of the Pennsylvania Warehousing Company to oversee the operations of our company under those contracts. The terminal services rendered by our company to the Baltimore & Ohio Railroad Company, first, with respect to inbound freight and outbound freight under the contract [fol. 599] with that carrier are as follows:

The cars are placed on the siding of our warehouse. We inspect and break the seals, and open the doors, unload the

cars, tally the contents, watch out for damage, record the damage or overage or shortage to the railroad company, insure the goods, store them for a period not exceeding 48 hours, and collect the freight. On the outbound freight we receive the merchandise, tally it and inspect it for damage, load it in the car and seal the car.

In the case of the Reading Company, our services are just the same with respect to the inbound freight, and with respect to the outbound freight our company renders no services.

There are eight distinctive services so rendered by us. With respect to the unloading of the cars, the cars are placed on the track. Our unloading foreman goes around and makes minute examination of the seals, takes a record of the seals in his book, and supervises the unloading, the tally of the contents, watches out for the damages and makes notice of that. We make a report to the carrier with respect to the condition of the seals only in the event they are broken or in bad order. In the event of damage to the freight or overage, or shortage, the railroad is notified on forms provided by the railroad. We send arrival notices out on the merchandise. It is our Pennsylvania Warehousing & Safe Deposit form.

We hold the freight for a period not exceeding 48 hours. By that I mean we provide the space in the warehouse, take the merchandise to that space and hold it there, if it is not claimed by the owner, for a period not exceeding 48 hours. When the freight is claimed by the owner within 48 hours we [fol. 600] make no charge to the owner for that service because it is under the contract with the carrier. That is true in the case of the Baltimore & Ohio, as well as the Reading Company. We make collection of the freight charges. That is a provision found in our contracts with both companies. Our method of operation in the collection of those charges is that upon receipt of a freight bill—upon receipt of a car, the carrier sends a freight bill to us. We place a stamp on it, "Please draw checks to the order of the Pennsylvania Warehousing & Safe Deposit Company, remit to 113 South 3rd Street," and that original freight bill that we receive from the carrier is forwarded on to the owner of the merchandise.

In addition to these services which I have enumerated, as a part of our responsibility and obligation under the con-

tracts, we provide the facilities and the buildings, at a large expense, to accommodate those shipments we receive under our contract with the carriers. For the performance of these services, and for the use of these facilities, the Baltimore & Ohio pays us 50 cents per ton on inbound and outbound shipments.

The Reading Company pays us 30 cents per ton on merchandise with the exception of newsprint paper, on which they pay us 15 cents per ton.

The Reading pays us nothing on outbound.

The Reading pays only on the inbound carload freight shipments.

In my years of experience, going back over 25 years with this company, I know of no single instance where our company has received any payment from either one of these carriers, on any cars—car or cars in which it had ownership of the freight contained therein.

[fol. 601] As a matter of fact the Pennsylvania Warehousing & Safe Deposit Company does not receive any shipments of carload package freight or make any such shipments. The only thing billed to it which it does receive is coal from mines in Pennsylvania and that is for its own use and consumption, and those are the only shipments that come into that company.

There is no payment received from the carrier on coal, that, of course, is at the bulk rate.

With respect to the handling of this carload package freight, we always receive the instructions, either from the carrier or from the owner of the merchandise. These instructions are received by messenger, by mail, by telegraph or by telephone, to be confined in writing. We never take any goods with respect to this freight, except upon instructions so received.

On a typical waybill where the freight is received, with a waybill reading, John Smith, care of Pennsylvania Warehousing & Safe Deposit Company, in such case we would make collection of the freight charges from John Smith and that is true in every case. The Pennsylvania Warehousing Company on its own account never makes payment of the freight charges. We never make collection of the freight charges from more than the one individual named on the waybill.

When freight is received at our warehouses, and we are unloading it, we make separation or segregation of it for our own convenience. We are not obligated to make that under the contract. We just do that for convenience in delivery.

I have not made a detailed investigation of what proportion of this freight coming in, moves out in that period of [fol. 602] time designated as the period not exceeding 48 hours. As a result of observing it in a general way, without a particular investigation I should estimate that it would run around from 40 to 60 per cent.

I do not know whether the Pennsylvania Warehousing & Safe Deposit Company renders any different service or services than the complainants in these cases. I believe we render about the same service as the complainants in this case, as indicated in the testimony of the complainant's witnesses in Washington.

Our company does not prorate the freight charges among a number of the owners of the goods. Our company does collect for the goods on deliveries made by customers—deliveries made for the customers of the warehouse, and remit to the shipper.

Cross-examination.

By Mr. Hickey:

This John Smith I referred to, may have an office in Chicago and not in Philadelphia. He might have an office in St. Louis or Kansas City, and in that event, when we collect the freight, to get the freight out of John Smith in Chicago, St. Louis, Kansas City or some other outside city, we would send the freight bill to him with the rubber stamp notation on it, "Please draw checks to the Pennsylvania Warehousing & Safe Deposit Company." This freight that we receive payments from the Baltimore & Ohio for, is all carload freight, transported at carload rates and the payments from the Reading Company is on carload freight transported at carload rates.

Q. Now I understood you to testify that you never make collections from more than one person. Are you speaking of your business activities in the month of June, 1928?

[fol. 603] A. Yes sir.

Q. Do you say that you would not do so if one of your customers asked you to?

A. Yes, sir.

Q. You would refuse to do it?

A. Refuse to split the freight.

Q. Refuse to—I am speaking now of freight charges, you would refuse to collect those freight charges?

A. Yes sir.

The Pennsylvania Warehousing & Safe Deposit Company has shipped small lots of freight out by express, American Railway Express, for the owners. We prepay the freight charges on such shipments.

We have shipped small lots of freight, outbound, over one or another of the three railroad systems serving Philadelphia for our customers. We have prepaid the freight charges on those shipments on instructions of the owners, acting as agents of the owners of the merchandise.

In conducting our warehouse business, we would prepay the freight charges for the account of the customer if they requested us to.

By Mr. Hickey:

Q. If any of your customers requested that you collect a certain amount of the transportation charges, on a certain lot of freight, delivered to a certain person in the city of Philadelphia, would you do so?

The Witness: If the meaning is that we would deliver a part of a car and collect the freight on a part of the car, we would not.

By Mr. Hickey:

Q. Now Mr. Justice, in describing the services that your company performs for those two railroad companies, I [fol. 604] did not understand you to describe the services when your company trucks that freight from certain delivery tracks.

Let us take the Baltimore & Ohio first: Does your company truck any of this inbound freight from the belt line—Baltimore & Ohio freight?

A. The freight, as explained before, for the Pennsylvania Stores and the Pennsylvania Tobacco Stores, is trucked from the Delaware Avenue sidings across the street.

Q. I am speaking of Baltimore & Ohio inbound freight. Have you told me all of the trucking services your company performs on the Baltimore & Ohio inbound freight for your warehouses?

A. Goods for the Atlantic Stores and West India Stores is trucked from Morro Phillips Stores—that is all that I know.

Examiner Brown: This map will be received and marked exhibit No. 93.

Redirect examination.

By Mr. Barnes:

Q. Mr. Justice, I show you the form of arrival notice, and the second form of arrival notice, and ask if those are the forms which are used by your company, the first in the case of one that does not require much space, and the second, where greater space is required for description of the goods?

A. That is right.

Examiner Brown: These forms will be received as exhibits 94 and 95.

The Witness: This arrival notice, either the short form, or the longer form, is sent to the consignee of the shipment, or in case of order-notify, it is sent to the notify party. [fol. 605] It is done on the date of the arrival of the car.

Edward W. Oescher was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Barnes:

My name is Edward W. Oescher. I have been employed by the Pennsylvania Warehousing & Safe Deposit Company over 18 years. My present position with the company is secretary and treasurer. I have brought a list of the stockholders of the company as of the present time.

Neither the Baltimore & Ohio Railroad Company nor the Reading Company nor any other carrier has any stockhold-

ings in the Pennsylvania Warehousing & Safe Deposit Company—not one single share. The stock control of the company I would say rests in what is now the estate of George H. Earle, Jr., Mr. G. W. Cook and three or four others, which are commonly known as the Earle group. Mr. George H. Earle, Jr., is a former vice president of the company, recently deceased in the present year, and Mr. Cook was his associate.

The Earle group owned stock in the Finance Company of Pennsylvania, which has a very large block of the stock, and other financial institutions in the so-called Earle group—I would say control the stock.

I have charge of the accounts of the Pennsylvania Warehousing & Safe Deposit Company. I am familiar with the contracts our company has with the Baltimore & Ohio Railroad Company and the Reading Company. I know of not one single instance while I have had charge of the accounts, which is over a period of nine years, where our company [fol. 606] has received any payment upon any freight in which it has any ownership interest whatsoever, from either one of these railroad companies. Our company receives coal shipments for its own use, on which no payment is made.

Hubert J. Horan was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Glasgow:

Mr. Glasgow: I want to say, Mr. Examiner, that this evidence that I am now offering, is offered on behalf of the Commercial Exchange of Philadelphia, and the other trade bodies who have intervened.

The Witness: I am president of the Commercial Exchange of Philadelphia. My business is flour. I have been engaged in that business over 40 years.

As to the present and largely as to the past, before the warehouses were established, I am familiar with the practices and methods of handling and delivering freight by the carriers in the city of Philadelphia.

Q. When, Mr. Horan, for the first time, did the Pennsylvania Railroad Company begin the practice of handling carload traffic package freight through warehouses, in accordance with the practice now in effect in the city of Philadelphia?

A. Well, would it be in order to state the conditions that existed before the warehouses——

Q. I was just going to get that date, and then I was going to ask.

A. That I think was in 1887.

Q. Now prior to that time, in 1887, what was the method [fol. 607] of handling and delivering carload package freight throughout Philadelphia?

A. Up to about 1883, warehouses—private warehouses were on Market Street, with railroad connection. The railroad tracks at that time—freight tracks ran down the center of Market Street, and each warehouse had a switch, and the flour was delivered into the private warehouse. Previous to that they were also on Broad Street. These tracks at one time extended as far as Eighth and Market, warehouses lined solidly on both sides of the street. Broad Street north particularly was all flour warehouses, and they had previous—sometime before that their tracks were taken up, but they had railroad connection when they were built.

The warehouses to which delivery was made, were owned, or leased, or in some way controlled by the parties who were engaged in the flour business and in other businesses in Philadelphia and the method of delivery was for the railway company to switch the car into the warehouse.

Q. Now when, Mr. Horan, did you say that the Pennsylvania Railroad Company began the present practice, in 1887, did it establish then a warehouse of its own where it made delivery to parties to whom the freight was consigned?

A. After the tracks were taken up off Market Street and the elevated railroad was built in, the railroad then established a freight station at 17th and Market. First they had it at 16th, then they put it at 17th. At that time, we hauled the flour from this freight station at 17th and Market, into our warehouse.

The first warehouse was established by the Pennsylvania [fol. 608] Railroad in 1886.

The Pennsylvania Railroad Company built a warehouse at 18th and Market Street, known as the flour warehouse.

At the time they built it, they made a proposition to all of the flour people engaged in the flour business. I was directly interested in it, and they gave us the privilege of subscribing for a portion of the stock of the Merchants Warehouse, they controlling the majority, in order to get us to have our deliveries made through the Merchants Warehouse. At the same time they gave us a special rate, a free storage rate of 10 days. Then they charged us one cent a barrel for each succeeding 10 days. That warehouse was established at 18th and Market. I knew all the circumstances in connection with it, and that was the terms.

Q. Now then, when the flour arrived at their warehouse, who unloaded it?

A. They established the Merchants Warehouse to manage the warehouse company, and made it—it was a corporation, and as I say, the people in the flour business had the privilege if they wanted of subscribing to the stock.

Q. Now the Merchants Warehouse Company that is a party to this proceeding, is that the same Merchants Warehouse Company that was engaged at that time?

A. Yes sir. The explanation that the railroad company—they came down—the officials came down to the Commercial Exchange, and the explanation they gave was this, that the time that they lost in having cars tied up, made it profitable to do that, to make a cheap rate of storage there, and they bought the property and built it. They owned [fol. 609] the ground and built the warehouse.

Q. And the purpose that I gather from you of the Pennsylvania Railroad Company in establishing this warehouse, through the Merchants Warehouse Company, and providing for the storage that you have spoken of upon flour delivered, was to secure a more expeditious release of their equipment?

A. It was for two purposes, first, to secure the expeditious delivery, and reduce the burden of freight that was coming into their station at that time at 17th and Market. The flour business was too big, really, to be handled through that station that they had there.

Q. Was it also the purpose to secure the expeditious release of their cars?

A. They had two things, the track delivery—there was not exactly a specific period—you could truck along for a certain length of time on track delivery, and it was also at

17th and Market, and therefore, this was the first time, I might say, that they limited us to what they called the free storage period, and then they gave us 10 days to take it out in free storage. At the present the time of free storage has been reduced to 48 hours.

The traffic is now handled in the warehouse in exactly the same system that it was handled when this warehouse was first established, except the reduction of the free storage period.

Q. Now, Mr. Horan, has there been any expansion throughout Philadelphia, from that time, of points established by the Pennsylvania Railroad Company, at which it would make these deliveries?

A. Well, at that time, every flour man had his own ware- [fol. 610] house. When the warehouse company gave us this low rate, which meant that we could leave the flour there for 40 days for three cents, and it cost us four cents to haul it in, it became an uneconomical proposition to keep your own warehouse, and gradually each flour man gave up his warehouse.

Then the warehouse became—could not handle that single warehouse—could not handle that business, and then they started to build warehouses in different sections of the city, which also I might say, the flour trade themselves took this proposition up on the ground of economy in hauling—that a man in another section did not want to have to come to 18th and Market, or to 15th and Carpenter, a man in the southern section didn't want to go away up town, and as a result of many conversations and talks with the railroad, and everything, and the warehouse company in particular, the system was established, that when they built a warehouse, to put it in some location that hadn't at that time the proper service, and the result is that every part of Philadelphia is now covered in such a way that you get the greatest economy of handling. If a man in Richmond or away uptown had to haul his flour from 15th and Carpenter, the cost of that would be 15 or 20 cents, and he would probably handle it out of that warehouse for about six to eight in the immediate neighborhood. This here thing has been worked out on the basis of the economic method of handling flour, and I might say the profits in the flour business are at the minimum and always have been.

Q. Were these different points, following the location of the warehous- at 18th and Market—were these different points where warehouses were established by the Merchants Warehouse, established at the direction of the [fol. 611] Pennsylvania Railroad Company as points where it would make delivery of freight?

A. That was our understanding of the conversation with the officials of the railroad.

Mr. Hickey: Objected to.

Examiner Brown: The witness may answer if he knows.

Mr. Hickey: I move to strike out the answer on the ground that it is an unfounded conclusion.

Examiner Brown: The evidence will stand, subject to Mr. Hickey's objection.

By Mr. Glasgow:

Q. What has become, Mr. Horan, of the warehouses operated or owned by the individual business men which existed prior to 1887?

A. Well, as far as the flour business is concerned, with the single exception of one, I do not believe today that there is a private flour warehouse in Philadelphia, except that one.

Q. Is that largely true of other lines of business than flour?

A. That I could not answer.

I do not see how it would be possible for a flour man today to go back to the old method of handling flour, which was in effect prior to 1887. When you take into consideration the tremendous growth of Philadelphia since, and that we have to make deliveries to almost every part of Philadelphia—now for West Philadelphia as an illustration, we use 31st and Chestnut; for Kensington we use the warehouse up there; downtown we use 15th and Carpenter, Front and Federal, or Central we would use Front and Chestnut. To get warehouses we couldn't get railroad connections today, [fol. 612] I don't believe, and to make an economical delivery for the benefit of the people—the consumer, it would be an impossibility, and the cost would grow to such tremendous figures that I don't know, we would all have to

localize our business. In other words, we could not make distribution really economically over the city of Philadelphia today.

The handling of flour is a highly competitive business in Philadelphia. The competition comes, of course, between merchants engaged in the business in Philadelphia, and mills who have their own offices here—large mills who have their own offices and have their own employes, selling to the same trade that we do. I would say that the average profit on flour is about 15 cents a barrel, in handling it in wholesale lots.

In my judgment, as far as the business interests in flour are concerned in Philadelphia, and those who are engaged in that business, if an additional burden was put on them in the expense of unloading and delivering the freight, the result would be that it would put an additional burden on the articles, of 50 cents a ton, or practically, on flour, of five cents a barrel, and the problem then would arise as to our ability to transfer that burden to the consumer, and we would be in a position where it would be really a question of whether we could do it.

In the state of competition in Philadelphia, it is my opinion that in a large number of cases it could not be done. It would simply be cutting our profits from 15 to 10 or from 10 to five. That would not justify continuing in the business.

The margin has grown so small in the business that the number of men are constantly lessening—the number of people that are in it.

[fol. 613] Of course, we have got the competition of the big mills who have their own agents here, and handle it, and they can absorb a percentage of that loss in their own business—it might be, but the general trade could not.

My testimony that I have given here so far as to the Merchants Warehouse Company and the Pennsylvania Railroad Company on deliveries, is equally applicable to the Baltimore & Ohio and the Reading and the Pennsylvania Warehousing & Safe Deposit Company, to this extent, that I testified that I knew all about the organization of the Merchants Warehouse Company, and I testified that positively, because I was actually in contact with the officials and heard their explanation of why it was being done.

Now, outside of the fact that the Pennsylvania Warehousing business, as far as we are concerned, is business exactly the same as the Merchants, I know nothing about how they are organized or anything else.

The effect as far as the deliveries made by the Baltimore & Ohio and the Reading Company upon the business interests of Philadelphia would be the same if it was withdrawn by the Reading and the Baltimore & Ohio, because of the fact that the distribution of the warehouses—the Pennsylvania Warehouse Company in Philadelphia are working in harmony as a matter of fact on trade principles with the Merchants, so that when we want to make certain deliveries, we ship it via the Pennsylvania Railroad to get the Pennsylvania Warehouse delivery. That is from an economical idea, economy in getting—economy in handling flour in Philadelphia.

I heard the testimony of Mr. Anderson at Washington, [fol. 614] who represented the Millers Association. Mr. Anderson, as president of the Millers International Association, testified that the millers objected to the present system of handling flour in Philadelphia; that he thought it should not be allowed into the warehouse until the bill of lading had been surrendered, the presumption being that the man could not get the bill of lading without first paying the draft. Of course, the man might mail the bill of lading to him—that often happens.

Now in the first place, the question of whether it will go on track, or whether it will go in a warehouse, depends entirely upon the shipper. When the shipper makes out a bill of lading and directs that the flour shall be delivered to the Merchants Warehouse at 15th and Callow Hill, or the Pennsylvania Warehouse at 15th and Carpenter, or the other one, then I contend that the railroad must deliver to that warehouse before a complete delivery is made. It must be put in there.

Now Mr. Anderson—the mills that he represents, have in their own hands a remedy, and that is, to consign it to Philadelphia track delivery, and then it cannot be put in a warehouse until the bill of lading is surrendered, but in order to do that, once it arrives there, as I understand it, to afterwards put in into the warehouse it would cost $6.30, and I do not believe that the railroad would pay the unload-

ing charge. So I conceive that Mr. Anderson misunderstood and did not know how things were conducted in Philadelphia.

He also testified that there was no other place that did business that way. Now, the only place that I am intimately acquainted with is New York. The flour is shipped in there, stored in the railroad place and held subject to the delivery of the bill of lading. That may be delivered [fol. 615] whenever the man pleases to do it. If he wants to avoid the storage of the flour in the warehouse, prior to the payment of the draft and the production of the bill of lading by the consignee, all he has got to do is to consign it to tract delivery in Philadelphia.

Examiner Brown: Would track delivery in Philadelphia be satisfactory to the interests you represent?

The Witness: It would not suit me, but he wants to put the whole of us in a class with about five per cent at the outside. What I am objecting to, he wants to demoralize our business.

The percentage of the traffic in flour coming into Philadelphia, in my judgment, from my experience and knowledge, to which the objections which Mr. Anderson urged, and to which I have referred, would apply, would not amount to five per cent under the most extreme circumstances. What he is objecting to is the men putting the flour in a warehouse and leaving it lay there without paying for it. Now if they made a contract with the mill that they will pay for that flour on arrival, the day it arrives their notice is sent them, and they have got at the outside 48 hours to complete their contract, and if they don't complete it, that is a matter of credit between the mill and the customer.

I am talking in a broad sense. If the consignee don't pay the draft, it is consigned to the order of the mill, notify John Jones. Mr. Jones has the draft—I am taking the general way of doing business. A draft is sent to the bank for Mr. Jones to pay, and on that is a notice, hold for arrival. Now his contract calls that he shall pay for that flour on arrival. Now the most he has got is 48 hours, which gives him an opportunity to have that flour inspected [fol. 616] and see that it is up to grade, provided the bill of lading permits him to do it. Now some mills, there is a provision that they won't allow it. In that event he could

not inspect, but all of my bills of lading have the provision that inspection is permitted, otherwise it could not be inspected, but in that 48 hours he has ample time to inspect and find out whether the flour is according to contract, and then it is up to him to pay it if he is going to stick to his contract.

The members of the Commercial Exchange, represented by the Flour Committee of the Commercial Exchange, and the members themselves have had this problem up for a number of years. As men who are trading here, it came to a question of them getting together here, or else upon the question of credits and how the business was being done, and everything, and we took this up, and it was a very, very serious thing, five or six years ago, and we took it up with the mills, and we wrote the mills, and we called their attention to it. We offered to send them a list of the people in Philadelphia that could be trusted, and I wrote personally to the president of the International Association, and he answered back by saying if he tried to instruct the millers on the question of credit, they would tell him to mind his own business. There is not a miller shipping that don't know certain people will take up their drafts, and other people will not—will hang on for a while. I am positive of another thing, that the amount of it has gone down to almost an infinitesimal amount today. That has largely been dependent upon the selection of people as customers who would pay their drafts promptly. That is the only solution, and we have cheerfully and willingly told the millers that we will help in any way to remedy this con-
[fol. 617] dition, and I want to say it was a thunder-clap to us when we heard Mr. Anderson's testimony.

Cross-examination.

By Mr. Hickey:

I could not name those millers who will ship that five per cent. I could take the membership of the International Federation and pick out some of them, but unless I had the list before me, I question whether I could or not.

I spoke about the competition of one mill which has its own warehouses in Philadelphia—the name of that mill I think is Pilsbury. There are quite a number of bakeries in Philadelphia. There are two who get their shipments

of flour in carloads, set on their own sidetracks. One is the Freihofer and the other is the American Stores.

I should say that the Pilsbury Mill does not get this allowance for unloading flour at its warehouse. I don't know, though, but I don't think they do, because that is a private warehouse, and I would not think they would be entitled to it.

Mr. Hickey: If the Examiner please, I move to strike out the testimony of the witness concerning the handling of flour at New York, unless and until my opponent, Mr. Glasgow, submits the published tariff provisions governing that handling.

Examiner Brown: The testimony objected to will be considered in connection with your objection and will stand as submitted.

By Mr. Campbell:

I am in the flour business. The name of my company is Hubert J. Horan. My son is a partner, but we trade under the name of Hubert J. Horan. I am a wholesaler, and a miller's agent, I would say. In other words, I represent certain mills as their agent, and I buy flour and sell it. Wholesaler I would say was a man that bought by the car-[fol. 618] load and largely sold by the carload. That is my business. The other is distributing flour as a miller's agent.

(Witness excused.)

Examiner Brown: Mr. Hickey, did I understand you correctly, in answer to a statement made by counsel for the Pennsylvania, that your clients would not be satisfied to receive the same contracts from the Pennsylvania and the other defendants, as are at present maintained with the intervening defendants?

Mr. Hickey: If you will separate that from the contracts, my clients would be delighted to receive the equivalent allowance from these railroad companies—that is, allowance of the same kind and character and measure, as is granted by these three defendant carriers to the subsidized warehouse companies. However, their counsel believes that they are not entitled to it any more than the subsidized warehouse companies are. Now that is the status. If you

wish, I can inform you definitely what I think these allowances are.

JAMES J. REILLEY was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Glasgow:

I live at 4625 North Broad Street, Philadelphia. My business is merchandise food broker and manufacturer's agent. I am a member of the Grocers and Importers Exchange of Philadelphia, which is an intervener in this case. I am speaking for that association and its members with regard to the question of change in the present method of handling carload shipments of food products in Philadelphia. They are opposed to any change in the present arrangement. The members of The Grocers and Importers [fol. 619] Exchange of Philadelphia are engaged in the wholesale grocery business. They handle a full line of grocery products and manufactured products that are disposed of through the retail grocer channels, canned goods, dried fruits, beans, cereals, flour, soaps and allied lines of that character.

Occupying the position that I do, a member of the Grocers and Importers Exchange, and also the Association of Manufacturers Representatives, I am engaged in the brokerage business, and my duty is to instruct the shippers how they are to ship the merchandise, unless I am advised by the purchasers how they want it shipped, and then I follow their instructions.

In ordering out the car or cars, I instruct the consignor, the shipper, to route his car Pennsylvania Railroad, as an illustration, Merchants Warehouse, River Front Stores, to me care of the Merchants Warehouse Company. The freight charges follow.

It is very unusual times when the freight is paid in advance on the shipment.

The usual method that I pursue, and is followed by I believe most every one, when a car starts from its originating point, destined to a specific warehouse, we advise the warehouse company that the car is rolling. When the car ar-

rives the warehouse company notifies us that the car has arrived, giving a note of the contents, and if there is any breakage in the car, or damage, and notation is made on that arrival notice, and the arrival notice specifies what is the content of the car, or in other words, if there are a varied number of lots in the car, they are specified on the notice of arrival.

[fol. 620] Very frequently the warehouse company calls us on the phone and tells us the car has arrived. The written notice to which I have heretofore referred, follows after the car has been opened and inspected. Very frequently the same day the car arrives. Very frequently I or the members of my Exchange have already sold the contents of that car. As soon at the notice arrives, we issue a written order from our office to the respective buyers that are in that car, noting on the order the specified articles that have been sold to them. Those orders we frequently deliver by a messenger from my office to the respective buyers, or it is sent to them through the U. S. Mail.

The order is made out to the respective buyers in this fashion, Merchants Warehouse Company, as an illustration, River Front Stores: Please deliver to John Doe & Company the following commodities. After those orders are presented by the parties to whom we have sold the freight or the commodity to, the warehouse company delivers the specified amount of the commodity to that person.

I spoke of the notice we got from the warehouse company, specifying the contents of the car and the condition of the contents of the car. The notice from the warehouse company attached to exhibit 91 is a type of notice we receive.

We, or the persons to whom we have sold the contents of the car, have 48 hours to take it from the warehouse company, before storage begins. If within 48 hours the contents of that car sold by us have not been demanded from the warehouse company, but is left there on the orders which we have issued, it goes on storage in the warehouse for account of the buyer, to whom I have issued the order, [fol. 621] and then goes in accordance with the warehouse tariff rate for storage. As far as the question of withdrawing the loading and unloading by the agent of the railroad, of this traffic—so far as people who are engaged

in the same line of business that I am in Philadelphia—the delivery I presume would have to be made from the track somewhere, team track. I presume it could be arranged to deliver it at the warehouse in case the consignee or his customers paid the unloading. I would either be obliged to pay the loading and unloading—unloading charges on it—or charge the respective buyers. Some one would have to pay it.

We could not possibly make an inspection of the contents of the car on the track. The car rolls in, and in most cases they have four or five different brands—four or five different grades and sizes—be impossible to get in the car and get at those respective packages in there and inspect inside of the car. It could not possibly be arranged to make the delivery to the persons to whom we have sold, unless the contents of the car, both the markings on the packages and the persons to whom they are going, are separated into lots.

There are some people that are engaged in the business that I refer to, or who are receiving food products, who are very large dealers in Philadelphia. The small dealers are by far in the majority.

Q. What would be the effect, in your judgment, and from your experience and knowledge, if this service which is now rendered by the railway company, were withdrawn, so far as the smaller dealers in Philadelphia are concerned?

A. I can answer that question in this way: The structure of the food business in the past 15 or 20 years has changed [fol. 622] entirely. I can illustrate that by the fact that the large jobbers are by far in the minority; the smaller jobbers, of course, in the majority. The merchandise is very highly competitive, the smaller jobbers competing with the larger distributors must necessarily sell at a very close margin. If they were to be obliged to add to their already—if they were to be obliged to add to their cost of the products they purchase, they would naturally not be in a competitive position with the larger jobbers, who may have their own sidings into their warehouses, as ultimately, as has been shown in the past 15 to 20 years, some 15 or 18 jobbers have been obliged to go out of business by the highly competitive situation that has been presented in the past 15 or 20 years.

If the cost of unloading, insuring, and so forth, of the carload package freight, were transferred from the railroad company, as it is handled at present, and put upon the consignees of the traffic, they could not stand the traffic at all. They could not stand any added cost to the cost that they pay for factory prices.

The freight rate which we pay involves the service of unloading and insuring and storing for 48 hours. That is the only charge we pay and we pay that when we pay it in the freight rate.

The present method and the distribution of the warehouse at points for delivery all over the city, has been in my experience a decidedly convenient and economical way of handling the traffic for the business interests of Philadelphia as now constituted.

I am not only a member of the Grocers and Importers Exchange of Philadelphia, but the Association of Manu- [fol. 623]. facturers Representatives and I am authorized to express here the views of the members of this association as to any change in the present method of handling the business.

By Examiner Brown:

Q. Mr. Reilley, in that connection, is it the view of the interests that you represent, that it would not be in their interest to have the same treatment extended to the complainants in this case, as is now extended the intervening defendants?

A. Our interests, Mr. Examiner, rest with one point, and that is we have no desire to have the present arrangements changed.

If the so-called allowance were extended to include the complainants there could be no objection to that from our interests.

By Mr. Bikle:

Q. Would that do you any good, unless those intervening defendants assumed the cost of unloading at their warehouses?

A. That would be very necessary.

Q. It would not do you any good if the railroads just gave them an allowance and they did not take those goods out of the car? The point you mean is that you would have no objection to the other warehouses getting the allowance, if they then assumed the burden of unloading the freight into their warehouses and relieved you of that and took care of it during the free time?

A. That is the manner in which I thought the question was put.

By Examiner Brown:

Q. In other words, assuming that they perform the same service as the intervening defendants, that is what you mean?

Mr. Bikle: For the railroads. Would it do you any good if they got the allowance and did not assume any of that duty?

The Witness: It would do us no good if they did not [fol. 624] absorb that.

Examiner Brown: The interests you represent would not object then to having the carrier defendants make allowances to these complainants, similar to those now enjoyed by the intervening defendants, provided that the services performed by the complainants would in all respects be identical to the services now rendered you by the Merchants Warehouse and the other intervening defendants?

The Witness: There would be no objection to that.

Mr. Bikle: When you say that they would be identical, you mean that they would render that at the expense of the railroad and not at your expense?

The Witness: Doesn't matter much to us whose expense, as long as it is not ours.

By Mr. Bikle:

Q. Do you know of any other interests in the situation to which the warehouse could look for that, except to the railroads or yourself?

A. That is about the only direction they could look for it.

If the Commission interfered with this arrangement by putting in a cease and desist order on the ground of discrimination, leaving it to the railway companies to cure the

situation, in Philadelphia by withdrawing the whole plan, then I would certainly protest on behalf of my associations, vigorously, to any such withdrawal of the service.

When it comes to the question of whether in addition to the service that we have now from the warehouses who are here as interveners, whether there shall be other warehouses performing the same service, to be paid for by the carriers, we have no interest in that question at all. But I do protest against any condition under which the arrangement under which the traffic has been handled for [fol. 625] years, being impaired or nullified. My evidence was directed to what would be the result to the business interests of Philadelphia if any such catastrophe should happen.

JAMES J. ROGERS was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Glasgow:

I live in Philadelphia. I am a member of the Commercial Exchange and the Bourse, both of them interveners in this matter. I am a representative of western mills, selling flour to jobbers and carload bakers in Philadelphia. I am familiar with the way the carload package freight, so far as flour is concerned, is handled in Philadelphia, both by the Reading, Baltimore & Ohio, and through its warehouses or the warehouses that it has contracts with, and by the Pennsylvania, through the warehouses that it has contracts with.

The trade in Philadelphia approve very much the present system. They order their flour into Philadelphia from different warehouses, and by unloading the cars it gives them a chance to have them inspected, see what damage is done. They receive their notices from the warehouse company, and in that way know just what they are getting, and call and pay their drafts and take delivery of their flour.

If the shippers of that flour—millers—were careful as to the customers to whom they sell, as to their credit, and the promptness with which they pay their bills, there is no

disadvantage, so far as I can see, to the millers or shippers in this arrangement, because it is up to the broker here to know who he is selling, and if he is working for [fol. 626] the mill's interests, he will see that he sells to people that take care of their obligations when a car arrives.

We sell the jobbers, who in turn sell to the small bakers and they also sell to the smaller carload baker, who buys in carload lots and brings it into the warehouse and stores it there and takes it out at any time.

Taking the smaller jobbers to whom we sell, competition is very keen between them. As a matter of fact, it is well known that the big baking concerns in Philadelphia are always able to buy their flour to better advantage than a smaller jobber or carload baker, for the simple reason the mills take the position they take these big orders as running time, and they figure on selling the smaller carload baker on a little better basis, where they make their profit. The jobber brings his flour into Philadelphia, he has to pay eight cents a barrel storage, 12 to 15 cents a barrel for delivering the flour to small bakers, and then add a nominal profit, credit of 30 to 60 days, which makes the price to the small baker a lot higher than the big baker. If any additional cost is put on to the small buyer, they might as well quit business, because there isn't a chance to exist.

If the arrangement as to the handling of freight, loading and unloading, and insurance, and 48 hours storage, and so forth, were cancelled or removed in Philadelphia, there would not be any small jobbers and small bakeries inside of five years, because they couldn't exist. They are just about making ends meet now. I am in position to know, because I get people in the jobbing business very close to me. I am agent for certain mills, namely, Minneapolis Milling Com- [fol. 627] pany, Minneapolis, Minn.; Texas Flour Mills, Galveston, and Excelsior Flour Mills, at Kansas City, Mo. I have been in business here 15 years.

Cross-examination.

By Mr. Hickey:

I do not know if those small jobbers and dealers are in business at Toledo, O., or at Detroit, Mich., or at Pitts-

burgh. I do not know of any market, only Philadelphia. I am located here and do my business here.

STEWART UNKLES was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Glasgow:

I live in Philadelphia and have lived there about 22 years. I am in the flour business there. I am manager of one mill, manager-branch manager. The mill is Hecker-Jones-Jewell Milling Company. It is a large concern with headquarters in Buffalo, N. Y.

I was present when Mr. Anderson, representing the Association of Millers, testified in Washington.

Well, his testimony, I understood, was to the effect that the present arrangement under which carload package traffic was handled through certain warehouses in Philadelphia, for delivery for the several railroads, ought to be cancelled, because the drafts which were sent here by the shipper or consignor for the purchase price of the flour were not paid, when the flour went into the warehouse on storage, and that the shipper or consignor was delayed in receiving payment, indefinitely, by reason of the arrangement of storage with the warehouse companies under their con-[fol. 628] tracts with the railway companies.

Q. Will you please state whether there has been in the past any trouble of that kind in the business in Philadelphia?

Examiner Brown: Speak for your own concern, first.

We have not had trouble of that kind with our own concern in Philadelphia for the last four or five years. We did have trouble following the war,—a year or two after the war. At that time all the markets were declining very rapidly. The markets were in confusion. I think that has cleared up since that time.

Q. To what extent would you say, as far as your company is concerned, has any such trouble existed in Philadelphia within the last year, or at the present time?

A. My own experience is that I don't suppose there is one per cent of the entire flour jobbers in Philadelphia today [fol. 629] that practically renegs on their draft—that pays them fairly promptly. Any difficulty of that kind can be to a large extent overcome, by the exercise of care on the part of the miller or consignor in the selection of his customer. It is the fault of the seller in selling irresponsible dealers in Philadelphia, or anywhere else, that the drafts in most cases are laid here, and not paid.

I am familiar with the conditions throughout the trade in Philadelphia. My testimony would refer to the entire business here in Philadelphia, the selling of flour this past four or five years.

It is my business to keep myself informed as to the credit of customers and the paying of their drafts throughout the city and throughout the trade and I do that. I come in contact with other agents who are engaged in like business with me. Sometimes I hear what they have to say as to that kind of business; sometimes I don't

When we find a buyer of that kind that does not pay his draft, it becomes quite common knowledge amongst the trade, and it goes from one mill manager to another, until he practically is known as a "draft dodger."

Q. Now would you say that the testimony you have given as to your own experience with your own business, with regard to the difficulty with people not paying their drafts, was the usual experience in the business throughout the city?

The Witness: Why, I do not know what the other fellow's business is, as far as some of them are concerned, but I think it has been minimized a great deal throughout the trade this past four or five years. It is minimized simply because some of these men went out of business, and then again some of them became so bad and so rotten, that even [fol. 630] the mills refused to sell them.

(Witness excused.)

Examiner Brown: Do you have an exhibit, Mr. Woodcock?

Mr. Woodcock: Yes sir.

Examiner Brown: Without objection, this will be received as defendants' exhibit No. 96.

Mr. Woodcock: Mr. Hickey, will you be willing to stipulate that Mr. Gheen, if called, would introduce testimony with respect to this exhibit which would be similar in substance to the testimony which Mr. Funck introduced in connection with defendants' exhibit 80?

Mr. Hickey: Yes.

Stacey F. Kensil, Jr., was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination:

I represent in this proceeding the Philadelphia Warehousing & Cold Storage Company. The stock of that company is distributed among different individuals. I think the largest stockholder is a party who holds 605 shares. It goes from that down, in different amounts, down to two, three and one shares. There is no stock held by any carrier or any carrier's agent.

There is no majority stockholder in any individual or group of individuals. The capital stock is $800,000. We own our own building. We have three warehouses, in one group, at Delaware Avenue and Noble Street. We own all of those three.

Examiner Brown: Any other testimony in behalf of defendants or interveners in behalf of defendants?

(No response.)

Examiner Brown: We are ready to hear you in rebuttal, Mr. Hickey.

[fol. 631] Rebuttal

Mr. Hickey: I will call Mr. Gallagher.

James Gallagher was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Hickey:

I operate a general trucking service in the city of Philadelphia under the name James Gallagher, Inc. The general

office of that company is located at 50 South 3rd. That trucking service has been in operation for about 70 years. I have operated it about 45 years myself. In conducting our trucking service, I become informed of the location of the various public railroad freight stations in Philadelphia where inbound freight is customarily received for delivery, and where outbound freight is customarily tendered to the railroad companies for transportation. It has never come to my attention that the warehouses of the Merchants Warehouse Company were such public freight stations.

Being a public truckman, we frequent all the stations at Philadelphia, and distribute freight to all of those stations, and haul freight from the Merchants Warehouse and haul freight from the Pennsylvania Warehouse, and all other warehouses. I know that the Merchants Warehouses do not receive freight for shipment; I know that they are hauled to the Pennsylvania Railroad and not to the warehouse to receive outbound freight—that is, for shipments.

Our company has trucked freight to and from warehouses of the Pennsylvania Warehousing & Safe Deposit Company. Only a few days ago I got a couple of cases.

My experience during several years has been that the [fol. 632] Pennsylvania Warehouse always delivers freight out of lots.

For instance, Mauria Muria is one of the largest jobbers, and they want goods at 23rd and Callow Hill, or 16th and Callow Hill, and we haul from there. In other words, we haul them for a China house, and we take that notice and go to 16th and Callow Hill and get those cases, possibly two, three or four in lots, and I know that once upon a time as a warehouseman we had Mauria Muria's account, and we used to distribute them the same way, and we had also several other accounts—a refrigerator account—that likewise did the same thing with the Pennsylvania warehouse, and they are doing the same thing today. They are distributing them in one and two—they come in carloads.

Cross-examination.

By Mr. Glasgow:

The Merchants Warehouse Company never receive freight for shipment outside of Philadelphia. I mean that they would gather up in the stores of the city and take there

for delivery. No freight came to and was received at the Merchants Warehouse Company to put into cars, to be shipped out of the city of Philadelphia.

I called at the Pennsylvania Railroad station this morning, and I took Walnut street wharf—I took it up with some people there, that they asked me—they didn't care to get into this thing up here—who are very, very good friends of mine, and they know what they are talking about. I acquired that knowledge through Mr. William Hammersley, the agent of the Pennsylvania Railroad at Walnut street wharf. He said if any such shipments had come through the Merchants Warehouse, that they would come to his notice. He said such has never been the case—that there never have been any shipments. And I also saw Mr. Lind- [fol. 633] say, and asked him the same question, and he said precisely. Then I said to him that I was going to use that testimony today against Hammersley and Lindsay. They said they were sorry they spoke. I know what a bill of lading is.

Q. Look at that. Will you——

The Witness: This is a bill of lading, yes. That reads Curtis Publishing Company, shipping a carload of stuff to be shipped to Westchester, Mass. Curtis Publishing Company is one of the biggest shippers in the country today.

The information I have on the question of whether the Merchants Warehouse Company receives freight, puts it in cars for the railway company, which freight is shipped outside of Philadelphia, is not only the information I have from those men, Hammersley and Lindsay—we have heard further about that. We asked the warehouse there sometime ago. They said, no, they didn't receive any freight.

Q. Whom did you ask?

A. We asked the man on the platform.

Q. Who were they?

A. Foreman.

Q. Who is he?

A. Pat Toohey.

Q. What did you ask him for?

A. We did in this respect: We had a part carload in there, and we wanted to know if we could bring in the other part of the carload in there and ship it there, that the parties requested that; he said no.

Q. How did it get in there?

[fol. 634] A. As a warehouse proposition, to put in a car to go to some other place.

By Mr. Glasgow:

Q. What warehouse was it that you asked the man on the platform?

A. Merchants Warehouse, River Front Stores.

Q. And your reason, you say, for asking him, was that you did have a carload in the warehouse?

A. Requested by the shipper.

Q. And that you wanted to put more in there so as to make up a carload?

A. Yes, there was about three quarters of a car there, and we wanted to put about a quarter more of a car into it to complete a shipment and send it out.

Q. When was this?

A. This happened at various times. Maybe somebody would request our office—our office would telephone down.

Q. Tell us when you had three quarters of a car in there and wanted to fill it up?

A. Two or three years ago.

Q. Hasn't it been more than two years?

A. I said two or three years ago.

Q. You cannot give me the date?

A. No, unless I go back to the records.

Q. Now Mr. Gallagher, I want to be perfectly fair with you, and I do not desire to get into any question with you, [fol. 635] and I am giving you the opportunity, where you have stated so positively that the Merchants Warehouse Company did not receive freight and ship it out, when we can produce the bills of lading that show it, that I want to ask you to again consider the broad way in which you have stated that matter.

A. That bill of lading that you have may have been stuff shipped out of a warehouse—no indication to show the teamsters hauled that.

Q. I understand that, but I expect to follow it by the evidence of a man who received it, as to what was done, and I ask you again, do you mean to state in this record——

A. I s-and on the record.

I am the complainant in one of these actions.

By Mr. Bikle:

One of the gentlemen that I said gave me some information was Mr. William Hammersley. He is the agent down at Walnut street wharf and Mr. Lindsay is chief clerk.

Redirect examination.

By Mr. Hickey:

In the conduct of our trucking business over a period of years, our employes picked up freight from various locations in the city of Philadelphia and trucked that to the various railroad stations, for shipment outbound over the Pennsylvania Railroad and during that period I know of no instances where they tendered that for transportation at the warehouses of the Merchants Warehouse Company.

[fol. 636]. Recross-examination.

By Mr. Glasgow:

Q. Were those carload quantities?

A. We haul carloads and less than carloads. We do the largest trucking in the City of Philadelphia.

E. V. Sullivan was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Hickey:

Q. Mr. Sullivan, is there a material difference between the service of loading and unloading carload freight at railroad freight houses in Philadelphia, and the service of handling carload freight at warehouses in the city of Philadelphia?

A. Yes.

Mr. Barnes: I object to that, Mr. Examiner, if that is to bind the Pennsylvania Warehousing & Safe Deposit Company.

Mr. Hickey: I will confine the question to the warehouses operated by the complainants.

The Witness: There is a marked difference in the handling of carload package freight at freight stations, as com-
[fol. 637] pared to the handling—unloading of carload package freight at warehouses. Treating your inbound carload freight first, the privilege of having your carload package freight unloaded at freight stations is more or less confined to concerns who are located in Philadelphia who must, perforce, immediately sign for the entire carload, and have facilities to take that carload into their warehouse. I would like to refer to complainants' exhibit No. 30, which is a list of prominent business concerns that customarily use warehouse service in marketing—warehouse distribution service in marketing and distributing their goods in Philadelphia and other large cities. In this list there are concerns such as Morton Salt, Post Products, Cocoa Cola, Campbell's Soup, and other large national distributors. The traffic of these concerns is really the backbone of the public merchandise warehouse business, and when they, for instance, decide to market their goods in foreign cities,—and by foreign cities, I mean any city other than that in which their plant is located—they must perforce make a continuing arrangement with some warehouse company to receive the carloads of their products, store as to marks, grades, sizes, and so forth, and have it available for immediate demands from their customers in lots of possibly a hundred pounds, 500 pounds or a thousand pounds. Now under Rule 23 of the Official Classification, the railroad—Pennsylvania Railroad or its employes, could not make a continuing arrangement to distribute carloads of package freight, transported at carload rates in small lots.

Hence these out of town manufacturers must make this arrangement with the public warehouse company. For a local concern to have its freight unloaded at a public freight station, he must immediately sign for the whole
[fol. 638] carload, and as soon as he does that, he immediately releases the railroad from any obligation as to loss by theft.

When he signs for this carload package freight at the railroad freight station, he immediately relieves the railroad from any responsibility as to loss and damage or pilferage, or from any other means. As is well known,

every carload of package freight contains a varied assortment of commodities, and as a result must be sorted in order to intelligently distribute it to the various concerns who call at the freight station for their goods; so that we have to secure from the railroad station, platform space, send down there labor to sort this carload package freight, according to marks and sizes, and other designation marks, and maintain watchmen service and labor there to deliver those various lots to the concerns who call at the platform for them.

This is evident to be uneconomical and, therefore, they use the services of the Merchants Warehouse to perform that duty. Even those concerns who do have facilities to assemble a carload of package freight on their own premises, very frequently use the services of the Merchants Warehouse Company, such as storage and trucking, or financing or some other such service.

You could find the various classes of freight that it would be impossible to distribute from freight stations, on our exhibit No. 37. Some of them are there, and some are new ones. As for illustration, the out of town manufacturer who would distribute in Philadelphia under continuing arrangements, could not use a public freight station for distribution.

[fol. 639] Brokers and selling agents, commission merchants could not use a public freight station for distribution of carload package freight, and all of those concerns requiring warehouse service for a part of a carload, and those concerns who distribute their carloads to two or more various individuals.

On outbound freight the exceptions to the Official Classification do not enable the carriers to allot platform space to freight forwarders, or any shipper to consolidate small l. c. l. lots and then tender them to the railroad for them to load the cars to be transported by the railroad as carload lots.

I can probably best illustrate the dissimilarity by referring to Mr. Richardson's testimony—he pointed out how essential it was to segregate and mark.

I have had occasion to use the telephone directory of the city of Philadelphia frequently in connection with our business. The stations of the three defendant carriers are

listed in that telephone directory. The telephone book of the city of Philadelphia is a source of information consulted by shippers for their use in communicating with the railroad stations in the city of Philadelphia.

The Merchants Warehouse Company, the Pennsylvania Warehousing & Safe Deposit Company, the Philadelphia Warehousing & Cold Storage Company, and the Quaker City Cold Storage Company are not included in the list of freight stations of the three defendant carriers listed in that telephone book.

The freight stations of the three defendant carriers are listed in the Classified Business Directory of Philadelphia, [fol. 640] Bell Telephone, under the classification "railroad companies."

The Merchants Warehouse Company, Pennsylvania Warehousing & Safe Deposit Company, Philadelphia Warehousing & Cold Storage Company, and Quaker City Cold Storage Company, are listed in that classified business directory under the classification "warehouses."

In that classified directory freight stations are listed under the heading of railroad companies and then there is a sub-classification of freight stations under that general heading of railroad companies.

Philadelphia, Pa.,
October 11, 1928—10:00 o'clock a. m.

Met pursuant to adjournment before Exam. Brown.
Appearances: Same as before.

Proceedings

Exam. Brown: Proceed, Mr. Hickey.

E. V. Sullivan resumed.

Direct examination continued:

[fol. 641] I have with me certain freight bills of the Pennsylvania Railroad and the Reading Company, showing names of consignors and consignees of shipments. (The witness produced freight bill No. 259041 of the Pennsyl-

vania Railroad Company, dated September 26, 1928, covering car GTW 575746.)

By Mr. Hickey:

Q. Mr. Sullivan, I direct your attention to a certain column or block upon that document, the document being entitled "Arrival notice," and a caption of the block reads as follows:

"Full name of shipper (origin and date, original car, transfer freight bill and previous waybill reference and routing when rebilled),"

and I will ask you to read the name typewritten under the words which I have read.

A. Hoover Co.

By Mr. Hickey:

Q. I direct your attention to the column or block on that arrival notice under the caption or heading, Consignee, address, final destination and additional routing, and I will ask you to read the typewritten inscription under that heading.

[fol. 642] A. The Hoover Co., Terminal Warehouse Company.

That is billing by the consignor to the consignor in care of the Terminal Warehouse Company. That is typical of considerable "care of" billing that we receive.

I have other documents here, both arrival notices or freight bills of the Pennsylvania Railroad Company and the Reading Company, showing substantially the information which I have developed from that arrival notice of the Pennsylvania Railroad, No. 259041.

At the time of adjournment I was testifying as to the loading and unloading of carload freight at railroad freight stations. When such freight is so loaded or unloaded, there is a trucking service involved between the railroad freight station and the party owning or shipping or receiving that freight and on carloads of freight handled at the Terminal Warehouse Company no such trucking service is involved because we have private sidetracks running into our buildings where the railroads place the cars, and we unload

the contents directly into the building. Or on outbound cars we load into the cars standing on those sidings.

When we receive inbound shipments of freight for our customers we regularly send them notices of arrival. In every instance we send them an arrival notice, noting in detail the amount, condition, marks, and so forth of the contents of that car, and that is mailed immediately after it is unloaded in our warehouse.

We get an arrival notice from the railroad in the form that has been shown here in an exhibit presented by Mr. Bikle. This arrival notice to which I refer is not the railroad arrival notice that we send, it is our own form. It is a warehouse service notice of arrival. That is nothing [fol. 643] extraordinary in the warehouse business, the sending of such notice of arrival. I believe every warehouse company sends this notice.

We give the railroads that serve our warehouse an individual report for every carload received at our warehouse, and on this report is noted the seal records, the amount and the condition, and all the information they desire.

Bad order packages in the cars are noted on the report that we make to the railroad, as well as to our customer. We perform repairs or cooperage service on damaged barrels, boxes and packages.

Cross-examination.

By Mr. Glasgow:

The tracks that get into our warehouse belong to the Terminal Warehouse. We have a lease with the Reading Railway Company for the building, known as Spring Garden Street storage. It is one of the buildings that we operate as a warehouse. We load and unload freight at that—not for the Reading Railway—but for our own account.

I do not believe we have an agreement with the Reading Railway Company as to the storage of freight that is not called for by the consignees, but we do receive some unclaimed freight from the railroad. We don't receive all. I cannot answer authoritatively as to who receives the balance, but I have been informed that the Pennsylvania Warehouse & Safe Deposit Company do. We receive some. Those are confined to shipments which may have originally

been directed to Willow-Noble street station of the Reading Company, and as our warehouse is very close to that station, the railroad company as a matter of convenience to the consignees store this with us. The storage is paid by whoever eventually withdraws it from the warehouse. It is known [fol. 644] as storage freight.

We also receive at our warehouse freight to be shipped—to be loaded for outbound shipment in some instances. It is negligible compared with the volume that we receive of incoming shipments.

We hold ourselves out as ready to receive any that is offered to us for outside shipment.

By Mr. Barnes:

I don't know as a matter of fact that we receive nearly all unclaimed freight from the Reading Company.

I cannot tell how much we received in the year 1927, but it is so small that it is negligible. It is one of the smallest factors of our business, but we do receive it from the Reading. I do not know that that is the greater amount of the unclaimed freight coming into the Reading Company. When that unclaimed freight comes into our warehouse, we pay the freight charges on it to the Reading Company and then we hold that for the period of time that is required by law, and sell it if charges are not paid.

The rate of storage that we charge on that unclaimed freight depends on the character of the merchandise. For your information I can say to you that handling this unclaimed freight for and on behalf of the Reading Company costs us thousands of dollars, because we never realize the amount of storage charges or the amount of advances which we have paid to the Reading Company.

When I said that we received a negligible amount of storage freight, I meant from a tonnage standpoint. We may receive one small shipment of 10,000 pounds, that may have three or four or five hundred dollars charges on it, which we pay to the railroad company. The tonnage may [fol. 645] not be great, but the amount of charges that we pay to the railroad company and which we later fail to realize at public sale, results in these losses that I have spoken of. We do not get those freight charges back when we have to sell the goods, in many, many instances,—in the

great majority of instances we don't. The business is highly undesirable from a warehousing standpoint.

The Terminal Warehouse trucks and hauls into its Race Street warehouse—we have no tracks there.

We are not doing any trucking for the Reading Company at the present time from Broad and Callow Hill. We only conducted experiments for a month or two.

We only leased one property from the Reading Company. I believe Pier 31 is included under Spring Garden Street Store, and that includes that little building across the street. To my knowledge there is just one lease between us and the Reading Company in existence.

EDWARD MCLOUGHLIN was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

I am engaged in the trucking business in the city of Philadelphia. I have been engaged in the trucking business in Philadelphia for myself the last three years and prior to that time I was in the trucking business for some one else. That is all I have done. My office is 2845 Belgrade Street.

In the conduct of my trucking business, I have had occasion to pick up freight at various points in the city of Phila- [fol. 646] delphia, and take that freight to the various railroad stations for outbound shipment.

In the conduct of my trucking business I have customarily called at those railroad freight stations and picked up freight, and trucked it to the parties I was directed to truck it to.

In the conduct of my trucking business I have become informed of the various railroad freight stations in Philadelphia, that customarily receive freight for outbound movement, and where I customarily receive inbound freight. I am also informed of the location of the several warehouses of the Merchants Warehouse Company.

I at no time became informed that the freight for our customers could be tendered for transportation via the Pennsylvania Railroad, by offering it at warehouses of the

Merchants Warehouse Company. I recently trucked some freight to a certain warehouse of the Merchants Warehouse Company, and there attempted to tender it for transportation outbound over the Pennsylvania Railroad. This was some time in February, 1928 at the Merchants Warehouse, 15th and Carpenter. I backed up against the platform with my truck. I got up on the platform. The man standing leaning on a broom, I asked him who is receiver, and he says John Laurel. He says he will be out in a few minutes. With that John came up. I handed him my bill of lading. He says What is this? I said, load of freight. He says, you are in the wrong place; we don't receive any freight here to ship. You want to go across the street. I says, this ain't no freight station? He says, no, this is the Merchants' Warehouse. That station across the street is Broad and Carpenter, but they call the station all about and along there Broad and Washington avenue.
[fol. 647] I took this freight to Broad and Washington avenue and shipped it. That is the freight station and I did ship it out from there.

The railroad employes there received it on the shipping documents which I had tendered at this Merchants Warehouse Company.

Cross-examination.

By Mr. Glasgow:

I was trucking that freight for Mr. Hickey who hired me. He hired me at Delaware Avenue and Brown. I seen Mr. Hickey standing across the street. The freight came from different places. I picked it up at a couple of stations. There were two different places I got the load. If I remember, there were a few washing machines, some of that health water, I think they call it. I just don't remember now on the bill of lading where it was to go. All of it was not to go to the same person—there were different shipments all on the same truck that I brought to the Merchants Warehouse Company.

I did not have on that truck a carload for one person. I did not have a carload on there for all the persons. It was a less than carload shipment that I proposed to ship in a number of small shipments to individuals. I don't re-

member who was paying the freight—whether they were prepaid or collect, or what they were. Mr. Hickey seen that I got paid for the hauling. The man came and gave me the money.

Mr. Glasgow: Now, if your Honor please, I move to strike this out—this evidence of the witness, for the reason it has no pertinency whatever to the inquiry here, because the contract provides for carload shipments of package freight, and the warehouse company has never held itself out and has never been engaged by the Pennsylvania Railroad Company, under its contract, for the shipment of less [fol. 648] than carload shipments, and this can have no more bearing on the question here involved than it could to the Irish Rebellion in 1848.

Redirect examination.

By Mr. Hickey:

As to whether I have got a truck that will hold a carload of freight, it is according to how much weight is in the car. I have no truck that will hold a carload of soap in boxes. I have no truck that will hold a carload of washing machines. I don't think I have any truck that will hold half a carload of washing machines. I know of no means of trucking carloads of freight to and from freight stations, except by trucking one load at a time.

I know of no means whereby I could put a whole carload of goods on my truck at one time, and tender it at a freight station at one time.

Recross-examination.

By Mr. Glasgow:

I don't know who had made out the bills of lading which I carried to exhibit to the place—I had them. None of those bills of lading showed that I intended to offer a carload for shipment. I did not tell the man on the platform, Mr. Laurel, that I spoke of, that I wanted to ship a carload of freight. I handed him my bills and told him I had a load of freight. I did not tell this man that I didn't have a carload of freight, but the bills of lading showed what I wanted to ship. I don't think it was a carload.

Examiner Brown: This evidence will stand and will be considered in connection with Mr. Glasgow's objection.

GEORGE W. HOOVER was thereupon called as a witness and, being first duly sworn, testified as follows:

[fol. 649] Direct examination.

By Mr. Hickey:

I heard the testimony of Mr. McLoughlin, and without going into all the details, I will say I tendered some freight at a warehouse of the Merchants Warehouse Company, for outbound shipment on or about the 25th day of January, 1928, at the River Front Stores, Merchants Warehouse Company.

I was demonstrating for Mr. Hickey, La Peer Trailer Company, office at 702 Beach Street, where I had orders from my office boss, Mr. C. B. Harvey, to make a demonstration for Mr. Hickey, where I would find the trailer at Delaware Avenue and Spring Garden Street, loaded. I took my tractor, picked up this trailer in which there was a man waiting with the bill of lading for the shipment. I proceeded down Delaware Avenue with my trailer, going to the River Front Stores. I backed up to the platform, jumping on the platform and asking where the receiver was, and I believe a gentleman by the name of Mr. Costello came forward, and I says, "Can I ship this load of freight from here?" He says, "Let me have your bill of lading." I handed over the bill of lading, and he says, "Oh, no, this is not a freight station." He says, "You will have to take that across the street, or some other freight station."

I jumped down off the platform again, got on my truck, drove away and took it to the Schackamaxon Street freight station.

I tendered it there for transportation with the same shipping orders. The railroad employes accepted it, signed the bill of lading. That is Shackamaxon Street freight station of the Pennsylvania Railroad Company.

[fol. 650] Cross-examination.

By Mr. Glasgow:

I had about 20 bills of lading. There was a whole crowd of them. I believe there were 20 different people. I do not know where any of it was to go. I believe it was part of a carload—it was only one of the first loads that I have taken. I only took that one load and the next day I was knocked off the shipment. I wasn't told to take it any more. I never did take a whole carload there and offer it for shipment.

What I had was a trailer load, with different kinds of commodities, to be shipped to about 20 different people. The kind of commodities were various things, grape juice, washing machines, wringers, and so on and so forth—miscellaneous stuff. I did not tell the man Costello that I saw there that I wanted to ship a carload of freight. I handed him the bills of lading. I did not tell him that I had any more besides what I had there. He told me that that could not be shipped there—told me to go across the street to the nearest freight station.

Mr. Glasgow: Now Mr. Examiner, I do submit that you ought not to permit this record to contain evidence of their being unable to ship less than carload freight at the Merchants Warehouse Company, when there never has been the slightest contention that either the railroad company or the warehouse company held itself out as receiving less than carload shipments at the terminals known as the warehouses.

Examiner Brown: Do I understand your statement means a motion to strike out the testimony?

Mr. Glasgow: I do, sir.

[fol. 651] Redirect examination.

By Mr. Hickey:

I was not able to haul a whole carload of these goods to the railroad station at one time. I did not make any explanation to Mr. Costello of what I had—only handing him the bills of lading. I handed Mr. Costello the bills of lading, and going over them, he looked through them and he says,—to repeat exactly what Mr. Costello said to me—

"Oh, hell, no, this is no freight station." He says, "The freight station is across the street, that is where you want to go." He did not leave me any opportunity to tender any more.

Recross-examination.

By Mr. Glasgow:

Nobody ever asked me to haul a carload of freight to the warehouse company for shipment at one time.

Examiner Brown: This evidence will stand subject to Mr. Glasgow's objection. In other words, I am making the same ruling in respect to this witness as I did the last.

George M. Richardson was thereupon recalled as a witness and, being previously sworn, testified as follows:

Direct examination.

By Examiner Brown:

Q. Have you, Mr. Richardson, recently, or ever, received carload shipments of freight at any of the Merchants' Warehouses, from any person?

A. Yes.

Mr. Bikle: You mean in the warehouses of the Merchants Warehouse that are included in these contracts?

Examiner Brown: Yes.

[fol. 652] The Witness: I understood you to ask me whether or not we had accepted from teams or trucks, freight tendered to us by shippers, patrons of the Pennsylvania Railroad for carload shipments, that we are obligated under our contract to receive, load, properly stow and forward in accordance with shipper's instructions; yes, sir.

Mr. Hickey: You see, the witness keeps interpolating this thing about this contract. The contract does not obligate the Merchants Warehouse Company to receive a pound of freight for outbound movement. You did not put that in your question. You see the witness is ready to in-

terpolate that and interpolate this tonnage business in every answer that he makes, into this contract.

I move to strike out what the witness said about that contract. Those agreements are in the record, and they are for argument by Mr. Glasgow, Mr. Bikle and myself.

Examiner Brown: The witness' statement in respect to contracts will not be considered in evidence. The only thing I want is the facts, whether or not your warehouse has actually received carload shipments of freight from the outside public, for delivery to the Pennsylvania Railroad Company?

The Witness: Yes sir.

Examiner Brown: You have done that?

The Witness: Yes sir.

Examiner Brown: How recently?

The Witness: Yesterday.

[fol. 653] E. F. Morgan was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Hickey:

I testified at the hearing in Washington. I have visited the various railroad freight houses in the city of Philadelphia, and the warehouses operated by the warehouse companies that receive the allowances under consideration. I have seen them all. I have viewed them all, but I have not been in them.

On my visits to the railroad freight houses, I observed the painted signs that show the name of the railroad com-[fol. 654] pany. For example, the Shackamaxon freight station of the Pennsylvania Railroad at Delaware Avenue and Laurel Street, has a sign on the upper portion of the building—large painted letters, plaintly visible from the street, reading: "Pennsylvania System, Shackamaxon Freight Station." It also has a sign with the same wording on the Delaware Avenue side of the office building.

Second and Berks Street station of the Reading Company has a sign on the upper section of the building, with a large painted sign,—large sign, reading: "Reading Company, 2nd and Berks Street Freight Station."

Baltimore & Ohio Station at 24th and Race, has also a sign on the upper portion of the building, reading: "Baltimore & Ohio Railroad Freight Station."

Without dealing with these 20 or more freight stations I will summarize what I saw at these other railroad freight stations. Each of the stations had a sign of similar portent on them, one or more, indicating that they were railroad freight stations. I also visited those warehouses. None of those warehouses bore signs indicating that they were railroad freight stations.

The River Front Stores of the Merchants Warehouse Company has a very large sign on the upper portion of the building on the Delaware Avenue side, reading: "River Front Stores, Merchants Warehouse Company."

Summarizing the others of the Merchants Warehouse Company, without going into them in detail, they all had signs, bearing the names "Merchants Warehouse Company," and as a general rule the specific name of the [fol. 655] store, in one or more places. Proceeding to the Pennsylvania Warehousing & Safe Deposit Company's warehouses, for example, the Pennsylvania Warehousing & Safe Deposit Company's warehouse at the corner of Delaware and Pine Street, has a sign painted in large letters on the Delaware Avenue side, reading: "Pennsylvania Warehousing & Safe Deposit Company;" on the Pine Street side, reads: "Pennsylvania Warehousing & Safe Deposit Company," Delaware Avenue stores—Pennsylvania stores—tobacco stores.

Summarizing what I saw at the other warehouses of that company, they all had signs on them bearing the name of the company, Pennsylvania Warehousing & Safe Deposit Company, with one exception. I think the Atlantic Stores did not have the name of the company on there, but had the name "Atlantic Stores," embedded in the stone on the side of the building.

These painted signs I described, were visible to any one on the public streets near these railroad stations and near these warehouses. There was one exception at the 31st

and Chestnut warehouse of the Merchants Warehouse Company, there is a sign over the windows of one room, reading: "Pennsylvania System Freight Agent," and there is a similar sign, a small sign over the door leading into that room. That is the office of Agent Lukens of the Pennsylvania Railroad.

Cross-examination.

By Mr. Glasgow:

In other words, that freight agent had an office in that building and there was a sign over his own door.

[fol. 656] EDMUND FUNCK, Assistant General Freight Agent of the Pennsylvania Railroad Company, was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Hickey:

During my examination I was asked if the allowances given to the Merchants Warehouse Company were given on both carload freight traffic and less than carload freight traffic. Afterwards I was asked to make a special study of the matter and give the results of my study. I examined some of our records, and found that we made the payments on carloads and less than carloads. These allowances are paid on both carload and less than carload traffic inbound and outbound.

I could not state the proportions of the tonnage of each of those traffics in terms of percentage, but in an endeavor to answer your question, I would put it this way: The preponderance is inbound carloads. Then at some of the warehouses there is a quantity of inbound less than carloads, but not nearly so great as the inbound carloads.

Outbound there are some carloads and some less than carloads, but the less than carloads outbound are relatively small.

At one station—you realize I did not have much time on this—at one station the outbound, as I recall it, was about

6600 pounds a day on an average, for I think it was 10 days.

By carloads I do not altogether mean carload freight, [fol. 657] transported at carload rates. There is a general understanding—that is the general understanding, but I found this condition, and as to this I did not actually see a waybill: this was reported to me, and perhaps you will call it hearsay. They tell me that as to River Front Stores, the outbound less than carload would go from River Front Stores to our Philadelphia transfer. Philadelphia transfer is on the western outskirts of the city of Philadelphia, and that is where we would transfer less than carload freight for its ultimate destination, Baltimore, Chicago, New York, New England, or whatever it would be; so that as to the less than carload outbound, it would go in a solid—what we call ferry car to Philadelphia transfer, and that might show up as one carload of 40,000 pounds, but it would actually consist of a number of less than carload shipments; but as to the others, it was with respect to specific less than carloads.

Just to clear that up, if I haven't, there is no merchandise car from River Front Stores to Chicago, for example. Do you know what I mean? Do you know what I mean by a merchandise car, so that it would go to a transfer? I mean a through car, by a merchandise car, an express car.

As to other than that exception, when I speak of carloads, I meant virtually a carload under the classification, and when I speak of a less than carload, I meant a less than carload under the classification. I meant carload freight under the classification, transported at carload rates specified therein with this exception, that if by any chance there was an any-quantity shipment in that lot that happened to [fol. 658] weigh twenty or forty thousand pounds, that would show up in that manner.

Cross-examination.

By Mr. Bikle:

Yesterday Mr. Gallagher referred to a conversation with Mr. William Hammersley and also Mr. Lindsay. Mr. Hammersley's relation to the Pennsylvania Railroad is freight agent at Walnut street wharf.

There are other freight agents in Philadelphia at other stations. Some of the warehouses of the Merchants Warehouse Company are within Mr. Hammersley's jurisdiction as a freight agent, namely, River Front Stores and Webb Terminal—no others. Mr. Lindsay, to whom Mr. Gallagher referred, is Mr. Hammersley's chief clerk, as I understand. He is a subordinate of Mr. Hammersley.

Robert Beatty, Jr., was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Hickey:

I have done business with the Merchants Warehouse Company for a number of years and it has handled inbound freight for me.

I never received that form of notice of arrival—Pennsylvania Railroad notice of arrival in exhibit No. 80—from the Merchants Warehouse Company on any of our freight. I received another form of notice. I have that form with me.

Q. Will you produce it and show it?

[fol. 659] (Witness produces form.)

Mr. Hickey: I offer in evidence the notice produced by the witness.

Exam. Brown: This will be received as complainants' Exhibit 97.

Cross-examination.

By Mr. Glasgow:

The form which I did receive gave me all the information I desired. I raise no objection to the form in which it is given. This kind of notice has been given to me in exhibit 97 ever since I have been doing business with the Merchants Warehouse.

By Mr. Bikle:

I do not get any notice on the form showed me in exhibit 80, from the warehouse. I did not get any such form from

anybody else, so that this (exhibit 97) was the only notice I got of the arrival of the shipments. I am satisfied with this as a notice giving me what I want to know about the arrival of the shipment.

Redirect examination.

[fol. 660] By Mr. Hickey:

The only other warehouse that I received notices from was the warehouse with which I have personal connection. I had no need to receive any special notice—would not have paid any attention to them if I did, because I was right on the ground myself.

The only two warehouses I deal with are the Merchants Warehouse Company and this warehouse company that I am an officer of.

Recross-examination.

By Mr. Glasgow:

I am not doing business with any other warehouse. I never received shipments through any other warehouse than the Merchants or the one with which I am connected during the period of my present business activity, namely, during the last four years.

I am interested in the Industrial Cold Storage & Warehouse Company, and I am also a representative of the American Products Sales Company, for whom I receive these notices.

Hugo Oberg was thereupon called as a witness and, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hickey:

During the past four years I have specialized in commerce work, in connection with rate cases before the Interstate Commerce Commission. I have had over 30 years rate and traffic experience, having been employed by the

Pennsylvania Railroad at Washington Avenue wharf, Philadelphia, as a rate clerk; also had charge of revising the inbound billing for the Pennsylvania Railroad at station Pier 27, North River, New York.

I was employed by the Trunk Line Association, 143 Lib-
[fol. 661] erty Street, New York, for about seven years.

Was in the employ of the Interstate Commerce Commission over 12 years, first, in its tariff and rate department, and during seven years of that time was a member of the Commission's Board of Suspension.

Was employed by the United States Railroad Administration in the Division of Law, for about two years.

For more than 10 years I was employed at one of these freight stations in Philadelphia—Washington avenue wharf—where I was engaged in computing freight charges.

I examined the published tariffs of the Pennsylvania Railroad Company on file with the Interstate Commerce Commission at Washington, with the purpose to ascertain at how many of its stations it gives allowances to warehouse companies, at how many it does not give such allowances, as is reflected in its published tariffs.

The list of freight stations published by that carrier in its tariff GO ICC 14700, now in effect, shows that there are several thousand freight stations on the Pennsylvania Railroad lines, Buffalo, Erie, Pittsburgh and east.

The practice of paying allowances to operators of warehouses for loading and unloading carload freight, as shown by the tariffs of the Pennsylvania Railroad, is confined to four points, namely, Philadelphia, Baltimore, Washington and Communipaw, N. J., and it is restricted to one or two such warehouse companies at each of these points named in the tariff. The provisions purporting to provide for the allowances to those warehouse companies at such four points appears in Pennsylvania Railroad Company tariff GO I. C. C. 14400. I have prepared excerpts of that tariff.

[fol. 662] Mr. Hickey: I offer the statement in evidence, containing the excerpts referred to by witness Oberg. I might state that that amplifies the showing in Mr. Funck's exhibit No. 62, to this extent: It reproduces the exact language of tariff GO I. C. C. No. 14400, relating to the allowances.

Examiner Brown: This will be received as complainants' exhibit No. 98.

Under that tariff, the allowance is confined to two warehouse companies, the Merchants Warehouse Company and the Quaker City Cold Storage Company at Philadelphia, Pa., and those two warehouse companies are named therein as the only ones to whom the Pennsylvania Railroad Company will make such allowances at Philadelphia. Referring to exhibit No. 60, introduced by witness Funck, and more especially to the following read from that exhibit:

"In the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. No. 1491, PSC-Pa. No. 86, agent's index No. 54, supplements thereto or reissues thereof, the following warehouses in Philadelphia, Pa., are considered freight stations during the free time."

I have examined the Jones' tariff referred to in that exhibit. In my opinion as a tariff expert the provisions read may not in susbtance be applicable at warehouses of the Merchants Warehouse Company.

The reasons for my opinion are that the substance of the storage rules are provisions under which storage charges can be accrued, computed and charged. When separated from those rules of substance, as is the attempt here, the [fol. 663] provisions relating to free time are of no force or substance and they cannot be applied to any computation of charges, or be used for any useful purpose whatever. This is my interpretation of the tariff. Further, the title page of the Jones' tariff reads:

"Governing storage rules and charges applicable to freight in carload quantities stored in or on railroad premises of railroads shown on pages 4 to 9, inclusive, hereof."

Rule 3, of that tariff, provides for 48 hours free time detention of freight when stored or held in the possession of the carrier in or on premises or tracks of the defendant railroad companies.

The provision on the title page and in rule 3 of that tariff negative the application of the rule published therein to freight in the possession of warehouse companies. There-

fore, there is no foundation in the storage tariff for the alleged 48 hours free time for freight in the possession of warehouse companies at Philadelphia.

The demurrage tariff of Agent Jones, I. C. C. No. 2003, applicable to the detention of railroad cars held for or by consignor or consignee for unloading or any other purpose, the car demurrage rules apply to the detention of railroad cars, and do not apply to the storage and handling of freight.

Therefore, the demurrage tariff does not afford any foundation for the so-called period of free time on freight in the possession of any warehouse company in Philadelphia.

[fol. 664] I found no foundation in the published tariff for any alleged 48 hours free time on any freight after it has been delivered by the Pennsylvania Railroad, in cars, to any warehouse in Philadelphia.

Cross-examination.

By Mr. Glasgow:

The number of that Jones' tariff that I referred to—the one before the last tariff—is I. C. C. No. 1876. That is the tariff that I say provides for 48 hours free time at stations of the railroads named therein. I take it that it applies at stations of the carriers. If there is a tariff on file, designating what are its stations, why then, the tariff that I have referred to would apply to those stations of the railroad company.

Pennsylvania Railroad tariff GO I. C. C. No. 14700 designates all of the stations on the Pennsylvania Railroad, and it applies at all of those stations.

The tariff would apply to any of the stations named as stations in the Pennsylvania Railroad's official list of stations. It would apply to any that the Pennsylvania Railway Company had designated in tariff No. 14700. All the stations of the Pennsylvania Railroad are named in that tariff.

The 48 hours free time tariff would apply to all stations designated in the official list of stations, which is I. C. C.—GO I. C. C. No. 14700. All the stations are named in there.

The Merchants Warehouse is named in there. Supposing there is another station, it would not apply to that. There is no other list I know of. There are some other railroads in the list west of Pittsburgh. The tariff as to the 48 hours free time would apply to any station which the Pennsyl- [fol. 665] vania Railroad Company had properly designated as a station.

Q. Now then in tariff GO I. C. C. No. 14322, Rule 32, I find this:

"In the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. No. 1491, PSC No. 86, agent's index No. 54, supplements thereto and reissues thereof, the following warehouses in Philadelphia are considered freight stations during the free time,"

and among those is the Merchants Warehouse Company, Pennsylvania Cold Storage and Market Company. Now then, why is it that the 48 hour tariff does not apply to——

A. I would say they are not the stations of the Pennsylvania Railroad.

Q. You say they are not. The Pennsylvania Railroad Company says they are, don't they?

A. They say they consider them, I guess. I don't know who considers them.

Q. They say they consider them?

A. I think that is indefinite.

Q. Well, you say they are not, but the Pennsylvania Railroad says they are, don't it?

A. I don't know as they do say that. They say they will be considered during free time——

Q. If you are going to consider a thing as a horse, that is your statement of what the horse is, is it not?

A. In the application of storage rules and charges, they are certainly not applied to storage charges in the Jones' tariff.

[fol. 666] Q. It says storage rules and charges, then that would be storage rules, would it—would be the question of whether there was free time and storage wouldn't it?

A. I don't see how they could apply the storage rules there.

By Mr. Glasgow:

I understood you to say that the tariff as to 48 hours free time, applied to any point where the Pennsylvania Railroad Company had properly designated as a station?

A. I said that stations named in GO tariff I. C. C. 14700.

Q. You went further, did you not, and did you not finally say that it applied to any point that the Pennsylvania Railroad Company had properly designated by tariff as one of its stations?

A. On the Pennsylvania Railroad.

Q. Or along its line?

A. Along its line, yes; lines east of Pittsburgh.

By Mr. Bikle:

I am not a lawyer. In my testimony, in giving this opinion, I partly predicated it on the suggestion that the goods were in the possession of the warehouse company, during this period of so-called free time.

I think I am competent to express an opinion as to who has the legal possession of those goods, as an experienced railroad man, but not as an attorney.

If I got off a railroad train and handed my grip to a red capped porter, I do not know in whose legal possession that is.

I am not undertaking to say in whose legal possession these goods are during the free time.

[fol. 667] Redirect examination.

By Mr. Hickey:

Mr. Oberg, I noticed during your examination by Mr. Glasgow, that you did not look at that tariff provision and deal with the particular tariff that it attempted to make applicable at warehouses of the warehouse company. Did I understand that correctly?

A. I did not attempt to deal with the particular, no.

Q. You and Mr. Glasgow were talking about some tariff provisions that are not on that exhibit 60, were you not?

A. He mentioned stations west of Pittsburgh, among other things.

Q. Does that appear anywhere on that exhibit?

A. No.

Q. Wasn't your testimony confined to what appears on that exhibit, Jones' tariff I. C. C. 1491?

A. Yes.

(Witness excused.)

OFFERS IN EVIDENCE

Mr. Hickey: I will not call additional witnesses. I have some documentary evidence to offer.

Yesterday, the witness Richardson identified a list of tenants of the Merchants Warehouse. I now offer that list in evidence, and I show counsel the paper that was identified by the witness, and notation entered thereon by Mr. Glasgow. To the best of my knowledge and belief we have made an exact reproduction of that paper. I show the original and the copy to counsel. I offer that list in evidence as exhibit 99.

I also offer in evidence, Pennsylvania Railroad Company list of private sidings, steamship lines' piers, and carload and less than carload delivery, and so forth, F. D. No. 199 and supplements 2 and 6 thereto. Those documents [fol. 668] were identified by the witness Funck.

Mr. Hickey: I now offer in evidence, Reading Company's circular No. 225, containing a list of manufacturers, merchants, public storage houses, grain elevators, and so forth; also supplement No. 1 to Circular No. 225; also supplement No. 2 to circular No. 225. That circular No. 225 has been identified by the witness Gheen. It is of the same character as the preceding exhibit.

I now offer in evidence Baltimore & Ohio Railroad Company circular No. 799, entitled Names and locations of principal firms and industries, and so forth.

I also offer supplement No. 1 to that circular No. 799, and ask that they be marked exhibit No. 102.

Those circulars were identified by the witness Sands. They are of the same character as exhibit No. 100.

Examiner Brown: These exhibits will be received as complainants' exhibits Nos. 99 to 102, inclusive.

(The same were thereupon received in evidence, marked "Complainants' Exhibits Nos. 99 to 102, inclusive."

Mr. Hickey: Complainants rest.

SUB-REBUTTAL

GEORGE M. RICHARDSON was thereupon recalled as a witness and, being previously sworn, further testified as follows:

Direct examination.

By Mr. Glasgow:

The warehouses of the Merchants Warehouse Company in the jurisdiction of Mr. Hammersley are River Front Stores and what is designated here as Webb Terminal. I [fol. 669] made an examination of the records to determine the number of cars that were loaded outbound at those warehouses, and either in whole or in part delivered to us by team. There were only two cars from the period January 1st until September 30, 1928.

I made a like examination as to the number of cars of like traffic loaded by us for the same period at all our warehouses in Philadelphia, except one which was a little warehouse in Kensington. I had no opportunity to check that warehouse, but the others I did.

Q. How many cars did you load outbound in which the traffic was either delivered to you from the trucks bringing it in, or which had been stored in your warehouse by the consignor or shipper and loaded from that point?

A. Well, my investigation would not be complete to cover all of the outbound tonnage, but any car that was hauled to us by team—any freight that was hauled to us by team, either in whole or in part, I have investigated.

Q. How many of those cars were there from January 1st to September 30th?

A. 744 cars.

Q. To your knowledge, Mr. Richardson, has the Merchants Warehouse Company ever declined to receive for outbound shipment any carload traffic that was offered to it?

A. No sir.

Q. I understood you that in all of those cars, the traffic was brought by team to your warehouse and loaded then into cars?

A. That is correct.

[fol. 670] Mr. Glasgow: I have no other questions.

Examiner Brown: Cross examine.

Mr. Hickey: No cross.

(Witness excused.)

Examiner Brown: Any further tectimony in this case?

(No response.)

Examiner Brown: Briefs will be due December 6, 1928.

Examiner Brown: Is there anything further in this case?

(No response.)

Examiner Brown: The hearing is closed.

Thereupon, at 12:35 P. M. on October 11, 1928, the hearing in the above matter was closed.

[fol. 671] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

In Equity. No. 5789

In Equity. No. 5791

[Titles omitted]

STIPULATION RE STATEMENT OF EVIDENCE—Filed Jan. 7, 1931

It is hereby stipulated by the parties, including the interveners, acting by their respective counsel, for the purpose of settling the record for the appeal to the Supreme Court of the United States, that:

[fol. 672] 1. The within and foregoing statement of evidence is a true and correct transcript of the stipulations and statements of counsel made and contains a correct statement in narrative form of all the oral testimony introduced before the District Court at the hearings in the above-entitled causes and before the Interstate Commerce Commission in the proceedings styled James Gallagher et

al. v. The Pennsylvania Railroad Company, Docket No. 20968; Walter A. Bailey et al. v. The Baltimore & Ohio Railroad Company, Docket No. 20968, Sub-No. 1; and Rex & Company, Inc., et al. v. Reading Company, Docket No. 20968, Sub-No. 2, as the same is contained in the official typewritten transcript thereof on file with the commission, a copy of which, duly certified by the commission, was offered in evidence in behalf of all the petitioners jointly in the District Court in the above-entitled causes; and said oral testimony together with the exhibits referred to therein, was all the evidence offered by any of the parties at the hearings before the District Court.

2. The said narrative of the oral testimony shall be substituted for the original testimony of the witnesses and shall have the same force and effect upon appeal as the original testimony.

3. The exhibits contained in the transcript so certified by the commission shall stand as original exhibits and shall be transmitted on appeal instead of transcripts thereof; and the original of said statement of evidence together with [fol. 673] this stipulation and the order of the court pursuant hereto shall be likewise so transmitted.

M. Hampton Todd, Allen S. Olmstead, 2nd, Counsel for the Merchants Warehouse Company, petitioner in No. 5781. H. Edgar Barnes, Counsel for the Pennsylvania Warehousing & Safe Deposit Company, petitioner in No. 5789. John F. Connelly, Counsel for the Philadelphia Warehousing & Cold Storage Company, petitioner in No. 5791. Allen S. Olmstead, 2nd, Counsel for the Commercial Exchange of Philadelphia et al., Intervening Petitioners in Nos. 5781, 5789, and 5791. Elmer B. Collins, Special Assistant to the Attorney General. J. Stanley Payne, Counsel for Interstate Commerce Commission. John J. Hickey, Counsel for James Gallagher et al., Intervening Defendants in Nos. 5781, 5789, and 5791.

[fol. 674] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

In Equity. No. 5789

In Equity. No. 5791

[Titles omitted]

ORDER APPROVING STATEMENT OF EVIDENCE—Filed Jan. 7, 1931

[fol. 675] On the written stipulation of the parties it is ordered that—

1. The within and foregoing statement of evidence in narrative form is hereby approved.

2. All exhibits in their original form, as they are included in the certified transcript of evidence before the Interstate Commerce Commission in its dockets Nos. 20968, 20968 Sub. No. 1, and 20968 Sub. No. 2, offered and received in evidence herein under the Commission's certificate, and the original of the statement of evidence in narrative form, shall be incorporated in the record. They contain all the evidence submitted to this court on the hearings of these causes, and shall be transmitted by the Clerk to the Supreme Court of the United States in lieu of the certified copy of the evidence in the proceedings before the Commission.

J. W. Thompson, United States District Judge.

[File endorsement omitted.]

[fol. 676] 1 and 2

EXHIBIT NO. 1

This agreement made this twenty-fifth day of January in the year of our Lord one thousand nine hundred and seventeen (A. D. 1917) between The Pennsylvania Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company," party of the second part;

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour,

grain and other merchandise at the warehouses of the said Warehouse Company situated on the plot of land bounded by Delaware Avenue, Walnut, Water and Chestnut Streets, in the City of Philadelphia, and State of Pennsylvania;

Now, therefore, this agreement witnesseth:

First. That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouses situated on said plot of land, and to promptly do the necessary shifting to enable its cars to reach the warehouses aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouses the amounts following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month, two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and during the first two years of the life of this [fol. 677] agreement, forty cents (40¢) per ton (of 2,000 pounds) for each ton of merchandise, and during the following years that the agreement is in force, thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

(c) That so long as this contract is in force it will not enter into any contract with any other person or corporation, making any allowance for terminal services in connection with the loading and unloading of merchandise to or from the warehouses located within the City of Philadelphia, nor shall it during the same time engage in the busi-

ness of warehousing merchandise in the City of Philadelphia, except as hereinafter provided. Provided, however, that this covenant shall not be construed so as to prevent the Railroad Company from warehousing freight in its terminals as an incident to delivery thereof or from entering into contracts for storage or other disposition of refused or unclaimed freight, nor shall it be so construed as to interfere with the performance by the Railroad Company of all obligations imposed upon it by law in respect to the carriage, storage or delivery of traffic. Provided, further, that in the event of the Railroad Company building any additional storage warehouses within the City of Philadelphia, either in connection with its freight stations or otherwise, the Warehouse Company shall have the option of renting or leasing such storage warehouse at a fair rental fixed by the Railroad Company, which option must be exercised by the Warehouse Company within sixty days after the same is offered to it by the Railroad Company; and only in the event of the Warehouse Company not being able or willing to undertake the operation of such warehouse, or warehouses, shall the Railroad Company be at liberty to engage in the business of warehousing merchan- [fol. 678] dise in said warehouses, and in the event of the Railroad Company engaging in such warehouse business the same shall be conducted on a commercial basis with due regard to the current storage rates at similar warehouses in the city of Philadelphia.

Second. The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines: it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceeding month, excepting, however, any such charges which the Railroad Company may, from time to time elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

(d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freights in the custody [fol. 679] or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as it holds the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouses, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouses in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignees, freight

delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the [fol. 680] purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceedings the effect of which shall be to divest the title or possession of the said Warehouse Company, this agreement shall, at the option of the Railroad Company, cease and determine: Provided, however, that nothing contained in this paragraph Fourth shall be construed to prevent the assigning of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

Fifth. This agreement shall take effect as of the first day of February, A. D. 1917, and shall continue in full force and effect for the term of twenty (20) years from said date, that is, until the first day of February, A. D. 1937, and thereafter from year to year unless and until terminated at the end of said period of twenty (20) years or at the end of any one year thereafter by either of the said parties hereto giving six (6) months previous written notice to the other of its intention so to do; Provided, however, that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days written notice to the Warehouse Company, cease and determine and become absolutely void.

Sixth. That if the terms and conditions of this agreement shall be found to work onerously to the interests of either party hereto, the said terms and conditions shall, at the written request of either party, be subject to revision at the end of any period of two years; and if the parties hereto cannot agree upon such revision, or any question shall arise as to the proper construction of any of the provisions herein contained, or difference as to any act or duty claimed to be involved in the performance hereof, if the same cannot be amicably adjusted, then the [fol. 681] same shall be settled by arbitration as follows: The party demanding the reference shall serve upon the other party a notice of such demand, stating the question upon which it demands the judgment of the references, and the name of one referee by its chosen. The party so notified shall, within ten days after receiving such notice, select a second referee, and notify the other party thereof in writing or if he shall fail to select a referee the referee selected by the party demanding the reference shall select the second referee. The referees so selected shall within a reasonable time meet and select a third referee, and fix a time and place for hearing the parties, of which they shall be notified in writing. If any referee shall refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said references made after hearing the party or parties who have attended in compliance with the notice required to be given, as above stated, shall be final and binding on the parties, and they severally hereby expressly agree to be bound thereby.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by Geo. D. D. Moy, Vice-President. Attest: J. ——— Wilson, Assistant Secretary. Merchants' Warehouse Company, by Harvey C. Willis, President. Attest: Jacob M——, Jr., Act. Secretary.

Signed, sealed and delivered in the presence of ——.——.

[fol. 682] [Endorsed:] James Gallagher et al. vs. The P. R. R. Co. I. C. C. Docket No. 20968. Exhibit No. —. Witness: —— ——. Document must be returned to the office of the secretary, Broad Street station, Philadelphia. A4125. Agreement between The Pennsylvania Railroad Company and Merchants' Warehouse Company providing for the handling of freight and collection of charges thereon at warehouse located at Delaware Avenue, Water, Walnut and Chestnut Streets, Philadelphia, Pa. Dated 25th January, 1917. The Pennsylvania Railroad Company.

[fol. 683] (3)

Know all men by these presents that the Merchants' Warehouse Company, a corporation organized and existing under the Laws of the State of Pennsylvania (hereinafter called the Warehouse Company), as Principal, and Indemnity Insurance Company of North America, a corporation organized and existing under the laws of the State of Pennsylvania as surety, obligors, are held and firmly bound unto The Pennsylvania Railroad Company (hereinafter called the Railroad Company), obligees, in the sum of Two Thousand (2,000) Dollars, lawful money of the United States of America, to be paid to the said The Pennsylvania Railroad Company, its certain attorneys, successors or assigns, to which payment, well and truly to be made the said obligors do bind themselves and each of them, their and each of their successors and assigns, jointly and severally, firmly by these presents. Sealed with their seals and dated the twenty-eighth day of July in the year of our Lord one thousand nine hundred and twenty-seven (A. D. 1927).

Whereas, the above named Warehouse Company has entered into a certain agreement with the said Railroad Company bearing date of twenty-eighth day of July A. D. 1927, (a copy of which agreement is hereto attached and made a part hereof as fully and with the same effect as if herein fully set forth) with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company situated on the plot of land bounded by Delaware Avenue, Kenilworth Street, Penn Street and Bainbridge Street, in the City of Philadelphia, and State of Pennsylvania.

And whereas, it is in said agreement provided "in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient securities and in such amount as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

Now the condition of this obligation is such that if the above bounden Warehouse Company shall and do make prompt payment of the said freight and other charges in said agreement called for, and shall and do perform all its other covenants and each and every covenant in said agreement provided for by it to be performed according to the true intent, purpose and meaning of the said agreement, then the obligation is to be void, otherwise to be and remain in full force and virtue.

Merchants' Warehouse Company, by Harvey C. Miller, President. Attest: S. Townsend Zook, Secretary. Indemnity Insurance Company of North America, by M. M. Dickinson, M. M. Dickinson, Attorney-in-Fact.

Signed, sealed and delivered in the presence of: M. M. Feeley.

[fol. 684] This agreement made this 28th day of July in the year of our Lord one thousand nine hundred and twenty-seven (A. D. 1927) between The Pennsylvania Railroad Company, hereinafter called the "Railroad Company", party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company", party of the second part;

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company situated on the plot of land bounded by Delaware Avenue, Kenilworth Street, Penn Street and Bainbridge Street, in the City of Philadelphia, and State of Pennsylvania;

Now, therefore, this agreement witnesseth;

First. That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouse, and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing, at the said warehouse the amounts following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month; and thirty-five cents (35¢) per ton of two thousand (2,000) pounds for each ton of merchandise; except that no payment shall be made by the Railroad Company for freight which, upon arrival at its destination, is or has been unclaimed or refused by the consignee and has been stored by the Railroad Company with the Warehouse Company for account of the owners thereof, nor upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material or supplies belonging to the Railroad Company; provided, however, that the Railroad Company shall have the right to cancel or abrogate this agreement and/or the payment of allowances provided for in this [fol. 685] paragraph in the event such action is authorized, permitted or required by any order, decision or law hereafter made, rendered or enacted by any State or Federal tribunal of competent jurisdiction, or in the event that these payments of allowances are held by any such tribunal to create undue preference or undue prejudice, upon such notice to the Warehouse Company in writing of its intention so to do as may be necessary to enable the Railroad Company to comply with such order, decision or law; and also provided that the Railroad Company shall have the right

to cancel or abrogate at any time after sixty days' notice to the Warehouse Company in writing of its intention so to do the payments of allowances provided for in this paragraph, if it shall decide to cancel similar payments of allowances now or hereafter in effect with respect to other warehouses in seaboard cities on its System.

Second. The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines, it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load, unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

[fol. 686] (d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freight in the custody or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as it holds the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its freight stations before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with the Warehouse Company by the Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involun-
[fol. 687] tary assignments, and that upon the happening of any legal proceeding the effect of which shall be to divest the title or possession of the said Warehouse Company,

this agreement shall, at the option of the Railroad Company, cease and determine; provided, however, that nothing contained in this Paragraph Fourth shall be construed to prevent the assignment of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

Fifth. This agreement shall take effect as of the first day of September, A. D. 1927, and shall continue in full force and effect until the first day of February, A. D. 1937; provided, however, that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days' written notice to the Warehouse Company, cease and determine and become absolutely void.

Sixth. This agreement shall be construed to be applicably only to the warehouse situated on the plot of land bounded by Delaware Avenue, Kenilworth Street, Penn Street and Bainbridge Street, as aforesaid, and in no wise or manner as impairing or affecting the terms and conditions of any other contract between the parties hereto in connection with any other premises. In the event of any arbitration being demanded and held under the provisions of any other agreement now existing between the parties, this agreement shall not be received or read in evidence before the arbitrators for any purpose whatsoever.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof, the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

[fol. 688] The Pennsylvania Railroad Company, by [Name illegible], Vice-President. Attest: Lewis Neilson, Secretary. Merchants' Warehouse Company, by Harvey C. Miller, President. Attest: S. Townsend Zook, Secretary.

Signed, sealed and delivered in the presence of [Names illegible].

[fol. 689] [Endorsed:] James Gallagher, et al. vs. The P. R. R. Co. I. C. C. Docket No. 20968. Exhibit No. —. Witness: —— ——. Agreement between The Pennsylvania Railroad Company and Merchants' Warehouse Company, dated 28th July, 1927, providing for the handling and storage of flour and grain and other merchandise at the warehouse of the Warehouse Company located at Delaware Avenue, Kenilworth, Penn and Bainbridge Streets, Philadelphia, Pa. From 1st September, 1927 to 1st February, 1937. Bond in the sum of $2,000, with Indemnity Insurance Company of North America, surety, attached. The Pennsylvania Railroad Company, C-5239.

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(4)

[fols. 690-694] Know all men by these presents, That the Merchants Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, (hereinafter called the Warehouse Company), as Principal, and The Guarantee Company of North America, a corporation organized and existing under the laws of the Dominion of Canada, (hereinafter called the Surety), as Surety, are held and firmly bound unto The Pennsylvania Railroad Company (hereinafter called the Railroad Company) in the sum of Two Thousand ($2,000.00) Dollars, lawful money of the United States of America, to be paid to the said The Pennsylvania Railroad Company, its certain attorneys, successors or assigns, to which payment, well and truly to be made, the said Principal and the said Surety do bind themselves and each of them, their and each of their successors and assigns, jointly and severally, firmly by these presents.

Sealed with their seals and dated the first day of March A. D. 1926.

Whereas, the above named Warehouse Company has entered into a certain agreement with the said Railroad Company bearing date the 10th day of April 1922, (a copy of which agreement is hereto attached and made a part hereof as fully and with the same effect as if herein fully set forth) with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said

Warehouse Company, situated at the Northeast Corner of Front and Bainbridge Streets in the City of Philadelphia, State of Pennsylvania.

And whereas, it is in said agreement provided in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties and in such amount as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants thereunder.

Now the condition of this obligation is such, that if the above bounden Warehouse Company shall and do make prompt payment of the said freight and other charges in said agreement called for, and shall and do perform all its other covenants and each and every covenant in said agreement provided for by it to be performed according to the true intent, purpose and meaning of the said agreement, then this obligation is to be void; otherwise to be and remain in full force and virtue.

Provided, however, that the Surety may for reasonable cause, withdraw as Surety upon this bond by giving thirty (30) days written notice to the said Railroad Company at its General Office in the City of Philadelphia, Pa. of such cause and of its intention so to withdraw; and the said Surety shall not be responsible for any act or default of the said Principal occurring after the expiration of the said Thirty (30) days.

Merchants Warehouse Company, by Harvey C. Miller, President. Attest: S. Townsend Zook, Secretary. The Guarantee Company of North America, William H. Jackson, Attorney-in-Fact; Edward H. De Baeck, Attorney-in-Fact.

Signed, Sealed and Delivered in the presence of D. E. Young, Witness as to Surety.

[fol. 695] (Copy)

This agreement made this tenth day of April in the year of our Lord one thousand nine hundred and twenty-two

(A. D. 1922) between the Pennsylvania Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company," party of the second part;

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company situated at the northeast corner of Front and Bainbridge Streets, in the City of Philadelphia, and State of Pennsylvania;

Now, therefore, this agreement witnesseth:

First, That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouse, and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouse the amount following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and thirty-five cents (35¢) per ton (of 2000 pounds) for each ton of merchandise, provided, however, that no payment shall be made by the Railroad Company for freight, which, upon arrival at its destination, is or has been unclaimed or refused by the consignees and has been stored with the Warehouse Company for account of the owners thereof, nor upon bulk freight, nor upon freight the movement of which by the Railroad Company has been

performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

[fol. 696] Second: The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

(d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freight in the custody or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so

long as it holds the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of, the said Warehouse Company, in respect to merchandise received by it at said warehouse, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also [fol. 697] from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its freight stations before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignees, or party entitled to receive the same, or which shall not be direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceeding the effect of which shall be to divest the title of possession of the said Warehouse Company, this agreement, shall, at the option of the Railroad Company, cease and determine: Provided, however, that nothing contained

in this paragraph Fourth shall be construed to prevent the assignment of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

Fifth. This agreement shall take effect as of the seventeenth day of June, A. D. 1922, and shall continue in full force and effect for the term of three (3) years from said date, and thereafter from year to year unless and until terminated at the end of said period of three years or at the end of any one year thereafter by either of the said parties hereto giving six (6) months previous written notice to the other of its intention so to do; Provided, however, that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days' written [fol. 698] notice to the Warehouse Company, cease and determine and become absolutely void.

Sixth. This agreement shall be construed to be only applicable to the warehouse situate at the northeast corner of Front and Bainbridge Streets, as aforesaid, and in no wise or manner as impairing or affecting the terms and conditions of any other contract between the parties hereto in connection with any other premises. In the event of any arbitration being demanded and held under the provisions of any other agreement now existing between the parties, this agreement shall not be received or read in evidence before and arbitrators for any purpose whatsoever.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof the said parties hereto have hereto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by —— ——, Vice-President. Attest: —— ——, Secretary.
Merchants' Warehouse Company, by —— ——, President. Attest: —— ——, Secretary.

Signed, sealed and delivered in the presence of: —— ——.

[fol. 699] This agreement made this tenth day of April in the year of our Lord one thousand nine hundred and twenty-two (A. D. 1922) between the Pennsylvania Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company," party of the second part:

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company situated at the northeast corner of Front and Bainbridge Streets, in the City of Philadelphia, and State of Pennsylvania;

Now, therefore, this agreement witnesseth:

First. That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouse, and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouse the amount following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, provided, however, that no payment shall be made by the Railroad Company for freight, which, upon arrival at its destination, is or has been unclaimed or refused by the consignee and has been stored with the Warehouse Company for account of the owners thereof, nor upon bulk freight, nor upon freight the

movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

[fol. 700] Second: The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

(d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freight in the custody or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as it holds the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company [fol. 701] from and against all manner — be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its freight stations before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceedings the effect of which shall be to divest the title or possession of the said Warehouse Company, this agreement, shall, at the option of the Railroad Company, cease and determine; Provided, however, that nothing contained in this paragraph Fourth shall be construed to prevent the

assigning of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

Fifth. This agreement shall take effect as of the seventeenth day of June, A. D. 1922, and shall continue in full force and effect for the term of three (3) years from said date, and thereafter from year to year unless and until terminated at the end of said period of three years or at the end of any one year thereafter by either of the said parties hereto giving six (6) months previous written notice to the other of its intention so to do: Provided, however, [fol. 702] that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days' written notice to the Warehouse Company, cease and determine and become absolutely void.

Sixth. This agreement shall be construed to be only applicable to the warehouse situate at the northeast corner of Front and Bainbridge Streets, as aforesaid, and in no wise or manner as impairing or affecting the terms and conditions of any other contract between the parties hereto in connection with any other premises. In the event of any arbitration being demanded and held under the provisions of any other agreement now existing between the parties, this agreement shall not be received or read in evidence before the arbitrators for any purpose whatsoever.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by Geo. D. D. Moy, Vice-President. Attest: —— E. Wilson, Secretary. Merchants' Warehouse Company, by Harvey C. Mills, President. Attest: S. Townsend Zoos, Secretary.

Signed, sealed and delivered in the presence of George M. Richardson, Luowden Henry.

[fols. 703-708] [Endorsed:] James Gallagher et al. vs. The P. R. R. Co. I. C. C. Docket No. 20968. Exhibit No. —. Witness: ——. Document must be returned to the Office of the Secretary, Broad Street Station, Philadelphia. A4730. Agreement between The Pennsylvania Railroad Company and Merchants' Warehouse Company, Dated 10th April 1922; Providing for the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company at the northeast corner of Front and Bainbridge streets, Philadelphia, Pa., for 3 years from 17th April, 1922 and thereafter from year to year until terminated on six months' notice. Bond in the sum of $2,000. With The Guarantee Company of North America, surety, attached. The Pennsylvania Railroad Company. C-3333.

[fol. 709] This agreement made this 4th day of March in the year of our Lord one thousand nine hundred and twenty-five (A. D. 1925) between The Pennsylvania Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company", party of the second part;

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company, designated as Kenilworth Stores, situated at Bainbridge, Front, Kenilworth and Penn Streets, in the City of Philadelphia, and State of Pennsylvania;

Now, therefore, this agreement witnesseth:

First. That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouse and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to

the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouse the amount following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, provided, however, that no payment shall be made by the Railroad Company for freight, which, upon arrival at its destination, is or has been unclaimed or refused by the consignee and has been stored with the Warehouse Company for account of the owners thereof, nor upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

Second. The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being understood that without the consent of the Railroad Com- [fol. 710] pany the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify *and* the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon

inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

(d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freight in the custody or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as it hold the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse, to be forward- over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

[fol. 711] Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its freight stations before delivery without charges to the con-

signees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceedings the effect of which shall be to divest the title or possession of the said Warehouse Company, this agreement, shall, at the option of the Railroad Company, cease and determine; Provided, however, that nothing contained in this paragraph Fourth shall be construed to prevent the assigning of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

Fifth. This agreement shall take effect as of the — day of —— (A. D.), and shall continue in full force and effect for the term of three (3) years from said date, and thereafter from year to year unless and until terminated at the end of said period of three years or at the end of any one year thereafter by either of the said parties hereto giving six (6) months previous written notice to the other of its intention so to do: Provided, however, that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days written notice to the Warehouse Company, cease and determine and become absolutely void.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

(35,557, 35,558, 35,559, 35,560, 35,561, 35,562, 35,563, 35,564, 35,565)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 9, 1931

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

No. 642

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS,

vs.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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Sixth. This agreement shall be construed to be only applicable to the warehouse designated as Kenilworth Stores, situated at Bainbridge, Front, Kenilworth and Penn Streets, as aforesaid and in no wise or manner as impairing [fol. 712] or affecting the terms and conditions of any other contract between the parties hereto in connection with any other premises. In the event of any arbitration being demanded and held under the provisions of any other agreement now existing between the parties, this agreement shall not be received or read in evidence before the arbitrators for any purpose whatsoever.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by ——— ———, Vice-President. Attest: ——— ———, Secretary.
Merchants' Warehouse Company, by ——— ———, President. Attest: ——— ———, Secretary.

Signed, sealed and delivered in the presence of ——— ———.

———

[fol. 713] This agreement made this 4th day of March in the year of our Lord one thousand nine hundred and twenty-five (A. D. 1925) between the Pennsylvania Railroad Company, hereinafter called the "Railroad Company," party of the first part, and the Merchants' Warehouse Company, a corporation organized and existing under the laws of the State of Pennsylvania, hereinafter called the "Warehouse Company," party of the second part:

Whereas, the parties hereto desire to enter into an agreement with respect to the handling and storage of flour, grain and other merchandise at the warehouse of the said Warehouse Company, designated as Kenilworth Stores, situate at Bainbridge, Front, Kenilworth and Penn Streets, in the City of Philadelphia, and State of Pennsylvania.

Now, therefore, this agreement witnesseth:

First. That the Railroad Company covenants and agrees:

(a) To maintain railroad tracks adjacent to the Warehouse Company's said warehouse, and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouses the amount following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, provided, however, that no payment shall be made by the Railroad Company for freight, which, upon arrival at its destination, is or has been unclaimed or refused by the consignee and has been stored with the Warehouse Company for account of the owners thereof, nor upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

[fol. 714] Second. The Warehouse Company covenants and agrees:

(a) To at all times accord to traffic passing over the lines of the Pennsylvania Railroad Company's System, of which the railroads of the Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure the Railroad Company the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

(d) To indemnify and hold harmless the Railroad Company for all damage to, or loss of, freight in the custody or control of the Warehouse Company, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

(e) To promptly notify the Railroad Company in writing of the failure of any consignee to remove freight, and, so long as it holds the said freight for account of the Railroad Company, to observe and comply with all directions with respect to such freight which may be received by it from the Railroad Company.

(f) To protect and indemnify the Railroad Company [fol. 715] from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

(g) To keep its said warehouse in good order and repair and properly equipped for the prompt and effective handling of the traffic delivered to and received by it.

Third. It is hereby mutually agreed that at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its freight stations before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do for the purpose of realizing its charges thereon.

Fourth. It is further agreed that no assignment of this agreement shall be valid without the consent of the Railroad Company, and that this shall apply as well to involuntary assignments, and that upon the happening of any legal proceedings the effect of which shall be to divest the title or possession of the said Warehouse Company, this agreement, shall, at the option of the Railroad Company, cease and determine; Provided, however, that nothing contained in this paragraph Fourth shall be construed to prevent the assigning of the income and revenues to the Merchants' Warehouse Company from this agreement as additional security for mortgage bonds to be issued by the said Warehouse Company.

[fols. 716 & 717] Fifth. This agreement shall take effect as of the 23rd day of March (A. D. 1925), and shall continue in full force and effect for the term of three (3) years from said date, and thereafter from year to year unless and until terminated at the end of said period of three years or at the end of any one year thereafter by either of the said parties hereto giving six (6) months previous written notice to the other of its intention so to do: Provided, how-

ever, that should the Warehouse Company in any respect violate or fail to comply with any of the conditions and covenants herein contained, then this agreement shall, at the option of the Railroad Company, on thirty (30) days written notice to the Warehouse Company, cease and determine and become absolutely void.

Sixth. This agreement shall be construed to be only applicable to the warehouse designated as Kenilworth Stores, situate at Bainbridge, Front, Kenilworth and Penn Streets, as aforesaid and in no wise or manner as impairing or affecting the terms and conditions of any other contract between the parties hereto in connection with any other premises. In the event of any arbitration being demanded and held under the provisions of any other agreement now existing between the parties, this agreement shall not be received or read in evidence before the arbitrators for any purpose whatsoever.

Seventh. This agreement and all its provisions shall be binding upon and enure to the benefit of the successors and assigns of each of the parties hereto.

In witness whereof, the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by Geo. D. Dixoy, Vice-President. Attest: Lewis Neilson, Secretary. Merchants' Warehouse Company, by Harvey C. Miller, President. Attest: S. Townsend Zook, Secretary.

Signed, sealed and delivered in the presence of —— ——.

[fol. 718] 6

Lease of 7/3/18 executed & expired 1 yr. from 7/1/18. $11,000 a yr. 35¢ terminal allowance. Traffic clauses.

[fol. 719] Tenant pays rental of $10,000 yr. since 3-1-20 in lieu of the amt. of $11,000 stated in lease dated 7-3-18.

[fol. 720] P. R. R., 9437. Lease calls for $11,000 & is for one year from 7/1/18. Allowance 35¢ ton without ——.

Rent now collected is $15,000 a yr.—no new lease executed —allowance 1 (50¢) ton.

M/M,
3/31.

[fol. 721] The Pennsylvania Railroad Company
General Office, Broad Street Station, Philadelphia

Lewis Neilson, Secretary; R. H. Groff, J. Taney Willcox,
Assistant Secretaries

25th September, 1918.

Dear Sir: At a meeting of the Board, held this day, the following resolution was, on motion, adopted:

Resolved, that the Board does hereby approve and authorize the execution of the agreement, this day submitted and considered, dated 3rd July, 1918, between The Pennsylvania Railroad Company and the Merchants Warehouse Company, providing for the lease to the Warehouse Company of the second, third and flo-rth floors and the basement of the new freight station at Front and Federal Streets, Philadelphia, Pennsylvania, for one year from 1st July, 1918, at a rental of $11,000 per annum, together with an additional rental equal to all charges for light, heat and power, the Railroad Company to maintain railroad tracks adjacent to the said warehouse and to do the necessary shifting to enable its cars to reach the said warehouse, the Warehouse Company to be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, for the payments and upon the terms and conditions in the said agreement fully set forth.

Yours truly, Lewis Neilson, Secretary.

Mr. T. W. Hulme, General Real Estate Agent.

[fol. 722] The Pennsylvania Railroad Company
General Office, Broad Street Station, Philadelphia

Lewis Neilson, Secretary; R. H. Groff, J. Taney Willcox,
H. T. Wilkins, Assistant Secretaries

26th September, 1917.

Dear Sir: At a meeting of the Board, held this day, the following resolution was, on motion, adopted:

Resolved that the Board does hereby ratify and confine the action of the Vice-President in charge of Real Estate, Purchases and Insurance in executing the agreement, dated 5th July, 1917, between The Pennsylvania Railroad Company and the Merchants Warehouse Company, providing for the lease to the Warehouse Company of the second, third and fourth floors, and the basement of the new freight station at Front and Federal Streets, Philadelphia, Pennsylvania, for one year from 1st July, 1917, at a rental of $10,000 per annum, together with an additional rental equal to all charges for light, heat and power, the Railroad Company to maintain railroad tracks adjacent to the said warehouse and do the necessary shifting to enable its cars to reach the said warehouse, the Warehouse Company to be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight, for the payments and upon the terms and conditions in the said agreement fully set forth.

Yours truly, Lewis Neilson, Secretary.

Mr. T. W. Hulme, Real Estate Agent.

[fol. 723] P. R. R. 9437

R. May 23rd, 1917.

Mr. Harvey C. Miller, President Merchants Warehouse Co., Philadelphia, Pa.

Dear Sir: Referring to my letter of July 18, 1916, consenting in advance to all subletting that may be made in any of the warehouses then leased to your Company; it is understood that similar consent is hereby given to subletting to your customers office space and other space reasonably sufficient for the business of your customers for that portion of the new Federal Street Freight Station leased to your Company with the understanding, of course, that nothing herein contained shall be construed as consenting to subletting the estire leased portion of the warehouse or assigning said lease or in anywise or manner further altering or impairing the obligations of the Lessee as contained in the lease, such subletting, however, to be subject to all the terms and conditions of the lease.

Yours truly, —— ——, Real Estate Agent.

[fol. 724] Extract of Minutes of Meeting of Board of Directors of the Merchants Warehouse Company, Held June 16th, 1917

"Resolved: That the agreement between the Pennsylvania Railroad Company and the Merchants' Warehouse Company, covering leasing of the new Federal Street Warehouse, Front & Federal Sts., Philadelphia, having been read to the Board and approved, the officers of the Company are hereby authorized to execute the same, with the Company's common and corporate seal affixed and duly attested."

I hereby certify that the above is a true copy of above resolution passed by Board Directors of Merchants W. H. Co.

Jacob Michel, Jr., Secretary. (Seal.)

Philad., Jly. 5/1917.

[fol. 725] This agreement, made this 3rd day of July, nineteen hundred and eighteen (1918) between The Pennsylvania Railroad Company, hereinafter called "Railroad Company," of the one part, and the Merchants Warehouse Company, hereinafter called "Warehouse Company," of the other part,

Witnesseth, That the Railroad Company for and in consideration of the rents and covenants and agreements hereinafter mentioned, which on the part of the Warehouse Company are to be paid, kept and performed, hath demised and let and by these presents doth demise and let unto the Warehouse Company, all those certain second, third and fourth floors and the basement of the New four-story and basement freight station erected by Railroad Company at Front and Federal Streets, Philadelphia, Pennsylvania; together with the right of ingress and egress to and from the demised premises and the street by means of the first floor of said building, by such passageways as the Railroad Company may from time to time prescribe;

To hold the said premises for and during the term of one (1) year, from the first day of July, nineteen hundred and eighteen (1918) and ending the first day of July, nineteen hundred and nineteen (1919), at and for the rent or sum of eleven thousand dollars (-11,000.00) per year, to be paid

in equal monthly payments, not in advance, on the first day of each and every month during the said term.

The Railroad Company hereby covenants and agrees to and with the Warehouse Company, as follows:

A. To maintain railroad tracks adjacent to the said warehouse and to promptly do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight for account of the Warehouse Company to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines, at non-discriminatory rates, and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia,

B. To pay to the Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing, thirty-five cents (35¢) per ton (of two thousand pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight nor upon freight the movement of which by the Railroad Company has been performed at a switching rate.

The Warehouse Company hereby covenants and agrees [fol. 726] to and with the Railroad Company, as follows:

I. To pay to the Railroad Company the rent hereby reserved on the days and times hereinbefore mentioned for the payment thereof, together with a further sum to be paid to the Railroad Company when demanded which shall be equal to all charges for light, heat, power for elevators and for similar services furnished by Railroad Company, and to keep the said demised premises in good order and repair during the said term and at the end of said term or sooner determination of this lease to peaceably deliver up possession of the said demised premises in the like good order and condition, ordinary wear and tear and casualties by fire and unavoidable accidents only excepted; and will not under penalty of forfeiture of this lease commit or suffer to be committed any act or thing whereby or in consequence whereof the conditions or stipulations of policy or policies of insurance on the said premises shall become avoided or suspended; or occupy or permit to be occupied

the said demised premises otherwise than as a warehouse for the storage of merchandise; that it will not assign this lease or the term hereby created or underlet the demised premises or any part thereof, an assignment within the meaning of this lease being understood and intended to comprehend not only the voluntary action of the Warehouse Company but also every levy or sale on execution or other legal process and every assignment or sale in bankruptcy or insolvency or under any other compulsory procedure or order of court; and that upon the happening of any legal proceedings, the effect of which shall be to divest the title or possession of the Warehouse Company, this agreement shall at the option of the Railroad Company cease and determine; Provided, however, that nothing herein contained shall be construed as preventing the Warehouse Company from sub-letting to its customers under and subject to all the terms and conditions of this lease, office space and other space reasonably sufficient for business of its customers in the demised premises; provided, further, that this limited privilege of sub-letting shall not be construed as authorizing the sub-letting as an entirety of the demised premises, or of assigning this lease.

II. a. To at all times accord to traffic passing over the lines of The Pennsylvania Railroad Company's System, of which the railroads of Railroad Company form part, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

b. To promptly load and unload and handle all freight received by it for storage in the said warehouse and later to be shipped over the lines of the railroad Company or [fol. 727] received by it for storage and delivery later to consignees, and in the case of incoming freight to be stored, to promptly notify consignee of the arrival thereof.

c. To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon inbound freight stored in its warehouse, payment to be made by the Warehouse Company to the Railroad Company on the fifth day of each month of freight and other charges

due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure the Railroad Company, the Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount, as shall be approved by the Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by the Warehouse Company of all its other covenants hereunder.

d. To indemnify and hold harmless the Railroad Company for all damages to, or loss of, freights in its custody or control, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight to cover the liability of the Railroad Company therefor.

e. To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

It is hereby mutually understood and agreed:

1. That at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times as it may lawfully and properly do for the purpose of realizing its charges thereon.

2. If, during the term of this lease, the warehouse is so [fol. 728] injured by fire or other casualty not occurring through the Warehouse Company's negligence, that it is rendered wholly unfit for occupancy and cannot be repaired within sixty days from the happening of such injury, then this lease shall cease and determine from the date of such injury. In such case the Warehouse Company shall pay the rent apportioned to the time of injury and shall immediately surrender the whole of the leased premises to the Railroad Company who may reenter upon and repossess the same. If such injury can be repaired within sixty days thereafter the Railroad Company may enter and repair and this lease shall not be affected, except that the rent shall be apportioned and suspended while such repairs are being made; but if said warehouse shall be so slightly injured by fire or other casualty as not to be rendered wholly unfit for occupancy, then the Railroad Company agrees that the same shall be repaired with reasonable promptitude and in that case the rent accrued or accruing shall not cease or determine.

3. If, even without any previous demand, the Warehouse Company shall fail or omit to pay the rents or sums hereby reserved when and as the same are made payable or shall in any other respect violate or fail to comply with any of the conditions and covenants herein contained, then this lease and tenancy thereunder shall, at the option of the Railroad Company, to be signified by a written notice of its intention so to determine this lease, on a day therein fixed, delivered to it, or left on the premises, at least thirty days previous to the day so fixed, determine and become absolutely void, without any right on its part, after the day so fixed, to save the forfeiture by payment of rent due or by other performance of the condition or conditions thus violated. That when the lease shall be so determined by condition broken and notice as aforesaid, it shall be lawful for any attorney as attorney for the Warehouse Company to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against the Warehouse Company and all persons claiming under it for the recovery by the Railroad Company of possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon,

if the Railroad Company so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, the Warehouse Company [fols. 729 & 730] hereby releasing and agreeing to release the Railroad Company from all errors and defects whatsoever in entering such action or judgment or causing such possessory writ to be issued, or in any proceedings thereon or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto; Provided, that the Railroad Company shall first cause to be filed in such action an affidavit made by some one on its behalf setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, and if a true copy of this lease shall be annexed to such affidavit, it shall not be necessary to file the original as warrant of attorney, any rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises shall deprive the Railroad Company of any remedy or action against the Warehouse Company for rent or for damages, for the breach of any covenant herein contained, nor shall the bringing of any such action for rent or for breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach be construed as a waiver of its right to insist upon the forfeiture and obtain possession in the manner hereinabove provided.

That all the rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the successors and assigns of such party as though they were in each case named, unless where the assigns are expressly excluded from certain rights.

In witness whereof, the parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by W. H. Myers, Vice-President. Attest: Robt. H. Groff, Asst. Secretary. (Seal.) Merchants Warehouse Company, by Harvey C. Miller, President. Attest: Jacob Michel, Jr., Secretary. (Seal.)

M. L. Donodien, Jr.

Same tenant; rent increased from $10,000 to $11,000 per yr.

[fol. 731] 7

P. R. R. 2108

The Pennsylvania Railroad Company, General Office, Broad Street Station, Philadelphia

Lewis Neilson, Secretary. R. H. Groff, J. Taney Willcox, Assistant Secretaries

12th July, 1916.

Dear Sir: At a meeting of the Board, held this day, the following resolution was, on motion, adopted:

Resolved that the Board does hereby approve and authorize the execution of the lease, this day submitted and considered, dated 1st July, 1916, to the Merchants Warehouse Company, of land on the southeast side of Beach Street northeast of Laurel Street, Philadelphia, Pennsylvania, for ten years from 1st July, 1916, at a rental of $2,250 per annum, together with an additional rental equal to the amount of all taxes, water rents and other charges assessed against the said land and improvements erected thereon by the Lessee, the said Warehouse Company to have the privilege of renewing the said lease for an additional term of ten years from 1st July, 1926, upon terms and conditions in the said lease fully set forth, terminable at any time by this Company on six months' notice.

Yours truly, Lewis Neilson, Secretary.

Mr. T. W. Hulme, Real Estate Agent.

[fol. 732] This Agreement, Made this 1st day of July nineteen hundred and sixteen (1916) between The Pennsylvania Railroad Company, hereinafter called the "Railroad Company" of the one part, and the Merchants Warehouse Company, a Corporation of the State of Pennsylvan, hereinafter called the "Warehouse Company," of the other part,

Witnesseth, That the Railroad Company for and in consideration of the rents and covenants and agreements hereinafter mentioned, which on the part of the Warehouse Company are to be paid, kept and performed, hath demised and let and by these presents doth demise and let unto the

Warehouse Company, all that certain lot or piece of land situate in the Eighteenth Ward of the City of Philadelphia, Pennsylvania, bounded and described as follows: Beginning at an angle in the southeast line of Beach Street distant about one hundred and forty-seven feet northeast of the northeast line of Laurel Street, and extending thence northeastward along the said southeasterly line of Beach Street two hundred and seventy-five feet to a point; thence southeastward at right angles to said line of Beach Street fifty-five feet to a point; thence southwestward parallel with said line of Beach Street one hundred feet to a point, thence northwestward at right angles to last mentioned course five feet; thence southwestward parallel with said line of Beach Street one hundred and seventy-five feet to a point; and thence northwestward at right angles to last mentioned course, fifty feet to the place of beginning.

Together with the privilege of maintaining at the sole cost and expense of the Warehouse Company the warehouse building, owned by it, as now erected on the above demised land.

To hold the said premises for and during the term of ten (10) years from the first day of July nineteen hundred and sixteen (1916), at and for the rent or sum of two thousand, two hundred and fifty dollars ($2,250.00) per year, to be paid in equal quarterly payments, in advance, on the first day of the month of July, October, January and April, in each year during the said term;

Together with a further rental which shall be equal to the amount of all taxes, water rents and other assessments levied upon the said land and improvements during the continuance of this lease, to be paid to the Railroad Company when demanded.

The Railroad Company hereby covenants and agrees to and with the Warehouse Company, as follows:

A. To maintain railroad tracks adjacent to said ware- [fol. 733] house, and to do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto, and shall and will take and deliver the same over its lines at the same rates (except in case of traffic hauled short distances, upon which it is customary for the Railroad Company to apply rates

varying with respect to different station deliveries in the City of Philadelphia) and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

B. To pay to the Warehouse Company for all services rendered by it in and about the receipt and delivery of freight, both incoming and outgoing, thirty-five cents (35¢) per ton (of two thousand—2,000-pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor material and supplies belonging to the Railroad Company.

The Warehouse Company hereby covenants and agrees to and with the Railroad Company, as follows:

1. To pay to the Railroad Company the rent hereby reserved on the days and times hereinbefore mentioned for the payment thereof, together with said further rental equal to the amount of all taxes, water rents and other assessments levied or charged upon the said premises; to keep the said warehouse fully insured during the continuance of this agreement and not to commit or suffer to be committed any act or thing whereby or in consequence whereof the conditions or stipulations of the policy or policies of insurance on the said premises, shall become avoided or suspended; to keep the said warehouse in good order and repair, at its own cost and expense, during the continuance of this lease and at the end of said term or sooner determination of said lease peaceably deliver up possession of said premises in good order and condition; not to occupy or permit to be occupied the said premises otherwise than for the maintenance of a warehouse for the storage of flour, grain and other merchandise.

Provided, that in the event of the destruction of the said [fol. 734] warehouse by fire, this agreement shall cease and terminate and the rent shall be apportioned to the time of such injury, unless the Warehouse Company shall within sixty days declare its intention in writing to the Railroad Company and proceed forthwith to rebuild the said warehouse; in such event the said rent shall cease from the

time of such destruction until the warehouse is again in condition for use.

II. a. To use all reasonable efforts to secure to the lines of The Pennsylvania Railroad Company's system, of which the railroads of Railroad Company form part, all traffic controlled by it or destined to or from the warehouse aforesaid, and to accord to traffic passing over said lines, at all times, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines, it being further understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

b. To promptly load and unload and handle all freight received by it to be shipped over the lines of Railroad Company or received by it for delivery to consignee and in the case of incoming freight to promptly notify consignee of the arrival thereof.

c. To be responsible to Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by Warehouse Company to Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure Railroad Company, Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount as shall be approved by Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by Warehouse Company of all its other covenants hereunder.

d. To idemnify and hold harmless Railroad Company for all damage to, or loss of, freights in its custody or control, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight.

e. To promptly notify Railroad Company in writing of the failure of any consignee to remove freight and to observe and comply with all directions with respect to such [fol. 735] freight which may be received by it from Railroad Company.

f. To protect and indemnify Railroad Company from and against all manner or liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse to be forwarded over the Railroad Company's lines or to be delivered to consignees and also from and against all manner of liability on account of receipts for merchandise issued by it.

It is hereby mutually understood and agreed:

1. That at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times as it may lawfully and properly do, for the purpose of realizing its charges thereon.

2. The Warehouse Company shall have the right to renew this agreement for a further period of then (10) years from the first day of July, nineteen hundred and twenty-six (1926), under all the terms, covenants, conditions and provisions herein contained, upon giving to the Railroad Company six month notice prior to the expiration of the term hereby created, but such renewal thereof shall not contain a provision for a renewal for a further period of ten years; Provided, however, that should the Railroad Company require the above demised premises or any part thereof for its corpor- — are purposes it shall have the right upon giving six months notice to the Warehouse Company to terminate this agreement at any time during the term hereby created or any renewal thereof and upon the expiration of the time mentioned in such notice this agreement and any renewal thereof shall absolutely de-

termine and the Warehouse Company shall quit and de-
[fol: 736] liver up possession of the said premises to the Railroad Company; in case of such determination by the Railroad Company and other warehouse facilities are provided by either the Railroad Company or the Warehouse Company to take the place of the above demised premises, and if the Warehouse Company shall occupy such new facilities, then the same terms, conditions, covenants and provisions pertaining to traffic and the handling of freight to and from the warehouse and the compensation therefor, as are contained in this agreement shall govern and control the traffic conditions and the handling of freight to and from the new warehouse facilities and the compensation therefor.

3. If, even without any previous demand, the Warehouse Company shall fail or omit to pay the rents or sums hereby reserved when the same are made payable or shall in any other respect violate or fail to comply with any of the conditions and covenants herein contained, then this lease and the tenancy thereunder shall, at the option of the Railroad Company, to be signified by a written notice of its intention so to determine this lease, on a day therein fixed, delivered to it, or left on the premises, at least thirty days previous to the day so fixed, determine and become absolutely void, without any right on its part, after the day so fixed, to save the forfeiture by payment of rent due, or by other performance of the condition or conditions thus violated. That when the lease shall be so determined by condition broken and notice as aforesaid, it shall be lawful for any attorney, as attorney for the Warehouse Company, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against the Warehouse Company and all persons claiming under it for the recovery by the Railroad Company of the possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon, if the Railroad Company so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, the Warehouse Company hereby releasing and agreeing to release the Railroad Company from all errors and defects whatsoever in entering such action or judgment or causing such possessory writ to

be issued, or in any proceedings thereon, or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto; Provided, that the Railroad Company shall first cause to be filed in such action an affidavit made by some one on its behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, and if a true copy of this lease shall be annexed to such affidavit, it shall not be necessary to file the original as a warrant [fol. 737] of attorney, any rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises shall deprive the Railroad Company of any remedy or action against the Warehouse Company for rent or for damages, for the breach of any covenant herein contained, nor shall the bringing of any such action for rent or for breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach be construed as a waiver of its right to insist upon the forfeiture and obtain possession in the manner hereinabove provided.

4. That at the end of the term hereby created, or any renewal thereof, or upon the sooner determination of the agreement as hereinbefore provided, the Warehouse Company will sell and convey the said warehouse to the Railroad Company at its then value, and if the parties hereto cannot agree upon the same, then the value thereof shall be fixed by arbitrators as follows, but not exceeding the original cost of the building:

The party demanding the reference shall serve upon the other party a notice of such demand and the name of one referee by it chosen. The party so notified shall, within ten days after receiving such notice, select a second referee and notify the other party thereof in writing, or if it shall fail to select a referee, the referee selected by the party demanding the reference shall select the second referee. The referees so selected shall within a reasonable time meet and select a third referee and fix a time and place for hearing the parties of which they shall be notified in writing. If any referee shall refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said referees, made after hearing the party or parties who have attended in compliance with

the notice required to be given, as above stated, shall be final and binding upon the parties, and they severally hereby expressly agree to be bound thereby.

5. That if the terms and conditions of this agreement shall be found to work onerously to the interests of either party hereto, the said terms and conditions shall, at the written request of either party be subject to revision at the end of any period of two years; and if the parties hereto cannot agree upon such revision, or any question shall arise as to the proper construction of any of the provisions herein contained, or differences as to any act or duty claimed to be involved in the performance hereof, if the same cannot be amicably adjusted then the same shall be settled by arbitration as hereinbefore provided.

That all the rights and liabilities herein given to or [fol. 738] imposed upon either of the parties hereto shall extend to the successors and assigns of such party as though they were in each case named, unless where the assigns are expressly excluded from certain rights.

The said The Pennsylvania Railroad Company, doth hereby constitute and appoint W. H. Myers to be its Attorney, for it and in its name, and as and for its corporate act and deed to acknowledge this Agreement before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

The said Merchants Warehouse Company, doth hereby constitute and appoint Harvey C. Miller to be its Attorney, for it and in its name, and as and for its corporate act and deed to acknowledge this Agreement before any person having authority by the laws of the Commonwealth of Pennsylvania to take such acknowledgment to the intent that the same may be duly recorded.

In witness whereof, the parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by W. H. Myers, Vice-President. Attest: Lewis Neilson, Secretary. (Seal.) Merchants Warehouse Company, by Harvey C. Miller, President. Attest: Charles Hay, Secretary. (Seal.)

[Canceled 50-cent internal-revenue stamp.]

[fol. 739] STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I hereby certify that on this 18th day of July in the year of our Lord one thousand nine hundred and sixteen (1916) before me, the subscriber, a Notary Public in and for the County and State aforesaid personally appeared W. H. Myers the Attorney named in the aforegoing Agreement, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Agreement to be the act of the said The Pennsylvania Railroad Company.

Witness my hand and notarial seal, the day and year aforesaid.

Ernest H. Brown, Notary Public. Commission expires 21 February, 1919. (Seal.)

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

I hereby certify that on this 18th day of July in the year of our Lord one thousand nine hundred and sixteen (1916), before me, the subscriber, a Notary Public in and for the State and County aforesaid personally appeared Harvey C. Miller the Attorney named in the aforegoing Agreement, and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said Agreement to be the act of the said Merchants Warehouse Company.

Witness my hand and notarial seal, the day and year aforesaid.

James Hay Simms, Notary Public. Com. expires Feb. 11, 1917. I am not an officer, director or stockholder of the Merchants Warehouse Company.

———

[fol. 740] James Gallagher, et al., vs. The P. R. R. Co. I. C. C. Docket No. 20968. Exhibit No. —. Witness ——
——.

[fol. 741] 8

This agreement, made this 1st day of July, Nineteen hundred and sixteen (1916) between The Pennsylvania Railroad Company, Lessee of the works and property of

the Philadelphia and Trenton Railroad Company, hereinafter called the "Railroad Company," of the one part, and the Merchants Warehouse Company, a Corporation of the State of Pennsylvania, hereinafter called the "Warehouse Company," of the other part;

Witnesseth, that the Railroad Company for and in consideration of the rents and covenants and agre-ments hereinafter mentioned, which on the part of the Warehouse Company are to be paid, kept and performed, hath demised and let and by these presents doth demise and let unto the Warehouse Company, all that certain lot or piece of land with the one story corrugated iron warehouse thereon erected, situate in the Nineteenth Ward of the City of Philadelphia, Pennsylvania, Beginning at a point fourteen feet east of the easterly line of Front Street and in the southerly line of Berks Street, if extended eastwardly, and extending thence along the said southerly line of Berks Street, if extended eastwardly, the distance of fifty feet to a point, thence southwardly along a line parallel with and sixty-four feet east of the easterly line of Front Street, the distance of two hundred and eighty-eight feet eight inches to a point; thence westwardly at right angles to the last mentioned course, fifty feet to a point; and thence northwardly along a line parallel with and fourteen feet eastwardly from the said easterly line of Front Street, the distance of two hundred and eighty-eight feet eight inches to the place of beginning. Containing fourteen thousand, four hundred and thirty-three (14,433) square feet, more or less.

To hold the said premises for and during the term of ten (10) years, from the first day of July, Nineteen hundred and sixteen (1916), at and for the rent or sum of One thousand six hundred and fifty dollars ($1,650.00) per year, to be paid in equal quarterly payments, in advance, on the First day of the months of July, October, January and April, during said term; Together with a further rental which shall be equal to the amount of all taxes and water rents, and other assessments levied or charged upon the above demised premises during the continuance of this lease; and together with a further sum which shall be equal to the cost of maintaining fire insurance of Fourteen thousand, four hundred and fifty dollars ($14,450.00) to be

placed by the Railroad Company upon the buildings, machinery, fixtures and appliances now erected upon and placed in the hereby demised premises, whether such insurance shall be wholly secured from Insurance Companies [fol. 742] or partly provided for by the insurance fund set apart by the Railroad Company.

The Railroad Company hereby covenants and agrees to and with the Warehouse Company, as follows:

A. To maintain railroad tracks adjacent to said warehouse and to do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto and shall and will take and deliver the same over its lines at the same rates (except in case of traffic hauled short distances, upon which it is customary for the Railroad Company to apply rates varying with respect to different station deliveries in the City of Philadelphia) and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

B. To pay to the Warehouse Company for all services rendered by it in and about the receipt and delivery of freight, both incoming and outgoing, thirty-five cents (35¢) per ton (of two thousand pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor material and supplies belonging to the Railroad Company.

The Warehouse Company hereby covenants and agrees to and with the Railroad Company, as follows:

1. To pay to the Railroad Company the rent hereby reserved on the days and times hereinbefore mentioned for the payment thereof, together with said further rental equal to the amount of all taxes, water rents and other assessments levied or charged upon the said premises and together with the said further sum which shall be equal to the cost of maintaining fire insurance on the said premises, and to keep the said demised premises in good order and

repair during the continuance of this lease and at the end of the said term or sooner determination of said lease will peaceably deliver up possession of the said premises in the like good order and condition, ordinary wear and tear and casualties by fire and unavoidable accidents only excepted; and will not under penalty of forfeiture of this lease commit or suffer to be committed any act or thing whereby or in consequence whereof the conditions or stipulations of the policy or policies of insurance on the said premises shall become avoided or suspended; or occupy or permit to be occupied the said premises otherwise than as a warehouse for the storage of hay, straw and merchandise; that it will [fol. 743] not assign this lease, or the term hereby created, or underlet the said premises or any part thereof, without the written consent of the Railroad Company endorsed hereon, an assignment within the meaning of this lease being understood and intended to comprehend not only the voluntary action of the Warehouse Company but also every levy or sale on execution or other legal process and every assignment or sale in bankruptcy or insolvency or under any other compulsory procedure or order of court; and that upon the happening of any legal proceedings, the effect of which shall be to divest the title or possession of the Warehouse Company, this agreement shall at the option of the Railroad Company cease and determine.

II. a. To use all reasonable efforts to secure to the lines of The Pennsylvania Railroad Company's system, of which the railroads of Railroad Company form part, all traffic controlled by it or destined to or from the warehouse aforesaid, and to accord to traffic passing over said lines, at all times, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being further understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

b. To promptly load and unload and handle all freight received by it to be shipped over the lines of Railroad Company, or received by it for delivery to consignees, and in the case of incoming freight to promptly notify consignees of the arrival thereof.

c. To be responsible to the Railroad Company for the prompt collection of all freight and other charges upon in-

bound freight, payment to be made by Warehouse Company to Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure Railroad Company, Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount as shall be approved by Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by Warehouse Company of all its other covenants hereunder.

d. To indemnify and hold harmless Railroad Company for all damage to, or loss of, freights in its custody or control, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight.

e. To promptly notify Railroad Company in writing of [fol. 744] the failure of any consignee to remove freight, and to observe and comply with all directions with respect to such freight which may be received by it from Railroad Company.

f. To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said warehouse to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

It is hereby mutually understood and agreed:

1. That at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse

Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do; and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do, for the purpose of realizing its charges thereon.

2. If, during the term of this lease, the warehouse is so injured by fire or other casualty not occurring through the Warehouse Company's negligence that it is rendered wholly unfit for occupancy and cannot be repaired within sixty days from the happening of such injury, then this lease shall cease and determine from the date of such injury. In such case the Warehouse Company shall pay the rent apportioned to the time of injury, and shall immediately surrender the whole of the leased premises to the Railroad Company who may re-enter upon and repossess the same. If such injury can be repaired within sixty days thereafter the Railroad Company may enter and repair, and this lease shall not be affected, except that the rent shall be apportioned and suspended while such repairs are being made; but if said warehouse shall be so slightly injured by fire or other casualty as not to be rendered wholly unfit for occupancy, then the Railroad Company agrees that the same shall be repaired with reasonable promptitude and in that case the rent accrued or accruing shall not cease or determine.

3. The Warehouse Company shall have the right to renew this agreement for a further period of ten (10) years from the first day of July nineteen hundred and twenty-six (1926) under all the terms, covenants, conditions and provisions herein contained, upon giving to the Railroad Com-
[fol. 745] pany six (6) months notice prior to the expiration of the term hereby created, but such renewal thereof shall not contain a provision for a renewal for a further period of ten years; Provided, however, that should the Railroad Company require the above demised premises or any part thereof for its corporate purposes it shall have the right upon giving ninety (90) days notice to the Warehouse Company to terminate this agreement at any time during the term hereby created or any renewal thereof

and upon the expiration of the time mentioned in such notice this agreement and any renewal thereof shall absolutely determine and the Warehouse Company shall quit and deliver up possession of the said premises to the Railroad Company; in case of such determination by the Railroad Company and other warehouse facilities are provided by either the Railroad Company or the Warehouse Company to take the place of the above demised premises, and if the Warehouse Company shall occupy such new facilities, then the same terms, conditions, covenants and provisions pertaining to traffic and the handling of freight to and from the warehouse and the compensation therefor, as are contained in this agreement shall govern and control the traffic conditions and the handling of freight to and from the new warehouse facilities and the compensation therefor.

4. If, even without any previous demand, the Warehouse Company shall fail or omit to pay the rents or sums hereby reserved when the same are made payable or shall in any other respect violate or fail to comply with any of the conditions and covenants herein contained, then this lease and the tenancy thereunder shall, at the option of the Railroad Company, to be signified by a written notice of its intention so to determine this lease, on a day therein fixed, delivered to it, or left on the premises, at least thirty days previous to the day so fixed, determine and become absolutely void, without any right on its part, after the day so fixed, to save the forfeiture by payment of rent due, or by other performance of the condition or conditions thus violated. That when the lease shall be so determined by condition broken and notice aforesaid, it shall be lawful for any attorney as attorney for the Warehouse Company, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against the Warehouse Company and all persons claiming under it for the recovery by the Railroad Company of the possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon, if the Railroad Company so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, the Warehouse Company hereby releasing and agreeing to release the Railroad Company

from all errors and defects whatsoever in entering such [fol. 746] action or judgment or causing such possessory writ to be issued, or in any proceedings thereon, or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto; Provided, that the Railroad Company shall first cause to be filed in such action an affidavit made by some one on its behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, and if a true copy of this lease shall be annexed to such affidavit, it shall not be necessary to file the original as a warrant of attorney, any rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises shall deprive the Railroad Company of any remedy or action against the Warehouse Company for rent or for damages, for the breach of any covenant herein contained, nor shall the bringing of any such action for rent or for breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach be construed as a waiver of its right to insist upon the forfeiture and obtain possession in the manner hereinabove provided.

5. That if the terms and conditions of this agreement shall be found to work onerously to the interests of either party hereto, the said terms and conditions shall, at the written request of either party be subject to revision at the end of any period of two (2) years; and if the parties hereto cannot agree upon such revision, or any question shall arise as to the proper construction of any of the provisions herein contained, or differences as to any act or duty claimed to be involved in the performance hereof, if the same cannot be amicably adjusted then the same shall be settled by arbitration as follows:

The party demanding the reference shall serve the other party a notice of such demand, stating the question upon which it demands the judgment of the referees and the name of one referee by it chosen. The party so notified shall, within ten days after receiving such notice, select a second referee and notify the other party thereof in writing, or if it shall fail to select a referee, the referee selected by the party demanding the reference shall select the second

referee. The referees so selected shall within a reasonable time meet and select a third referee and fix a time and place for hearing the parties, of which they shall be notified in writing. If any referee shall refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said referees made after hearing the party or parties who have attended in compliance with the notice required to be given, as above stated, shall be final and binding on the parties, and they severally hereby expressly agree to be bound thereby.

[fols. 747 & 748] That all the rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the successors and assigns of such party as though they were in each case named, unless where the assigns are expressly excluded from certain rights.

In witness whereof the parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year above written.

The Pennsylvania Railroad Company, Lessee, by W. H. Myers, Vice-President. Attest: Leon Wilson, Secretary. (Seal.) Merchants Warehouse Company, by Harvey C. Miller, President. Attest: Charles Hay, Secretary. (Seal.)

[Canceled 50-cent internal-revenue stamp.]

[fol. 749] 9

Philadelphia, Baltimore & Washington Railroad Company,
General Office, Broad Street Station, Philadelphia

Lewis Neilson, Secretary. R. H. Groff, J. Taney Willcox,
Assistant Secretaries

14th September, 1916.

Dear Sir: At a meeting of the Board, held this day, the following resolution was, on motion, adopted:

Resolved that the Board does hereby ratify and confirm the action of the Vice-President in charge of Real Estate, Purchases and Insurance in executing the lease, dated 1st July, 1916, to the Merchants Warehouse Company, of the

warehouse property at the southwest corner of 15th and Carpenter Streets, Philadelphia, Pennsylvania, for ten years from 1st July, 1916, at a rental of $10,370 per annum, together with an additional rental equal to the amount of all taxes, water rent and other charges assessed against the said premises, and the fire insurance premium, the Warehouse Company to have the privilege of renewing the said lease for an additional term of ten years from 1st July, 1926, upon terms and conditions in the said lease fully set forth, terminable at any time by this Company on six months' notice.

Yours truly, Lewis Neilson, Secretary.

Mr. T. W. Hulme, Real Estate Agent.

[fol. 750] This indenture, made this 1st day of July, nineteen hundred and sixteen (1916) between the Philadelphia, Baltimore and Washington Railroad Company, hereinafter called the "Railroad Company," of the one part, and the Merchants Warehouse Company, hereinafter called the "Warehouse Company," of the other part,

Witnesseth, That the Railroad Company for and in consideration of the rents and covenants and agreements hereinafter mentioned, which on the part of the Warehouse Company are to be paid, kept and performed, hath demised and let and by these presents doth demise and let unto the Warehouse Company,

All that certain lot or piece of land with the three story brick warehouse thereon erected, situate in the Thirtieth Ward of the City of Philadelphia, Pennsylvania, bounded and described as follows: Beginning at a point at the intersection of the westerly side of Fifteenth Street with the southerly side of Carpenter Street and extending thence westwardly along said southerly side of Carpenter Street three hundred and ninety-five feet to a point at the intersection of the southerly side of Carpenter Street with the easterly side of Sixteenth Street; thence southwardly along said easterly side of Sixteenth Street fifty-four feet to a point; thence eastwardly at right angles to Sixteenth Street and parallel with said Carpenter Street three hundred and ninety-five feet to a point in said westerly side of Fifteenth Street; and thence northwardly along said side of Fifteenth Street fifty-four feet to the place of beginning. Contain-

ing twenty-one thousand, three hundred and thirty (21,330) square feet, more or less.

To hold the said premises for and during the term of ten (10) years, commencing the first day of July, nineteen hundred and sixteen (1916), at and for the rent or sum of ten thousand, three hundred and seventy dollars ($10,370.00) per year, to be paid in equal quarterly payments, not in advance, on the first day of the months of October, January, April and July of each year during said term;

Together with a further rental, payable when demanded, which shall be equal to the amount of all taxes, water rent and other assessments which may be charged, levied, assessed and payable against the hereby demised premises during the continuance of this lease; and together with such further sum as shall be equal to the cost of maintaining fire insurance to be placed by the Railroad Company on the buildings, structures, machinery, fixtures and appurtenances now or hereafter erected upon the demised premises, in such amount as in the judgment of the Railroad Company shall be adequate, said sum to be paid when demanded.

[fol. 751] The Railroad Company hereby covenants and agrees to and with the Warehouse Company, as follows:

A. To maintain railroad tracks adjacent to said warehouse and to do the necessary shifting to enable its cars to reach the warehouse aforesaid for the purpose of taking from and delivering to the same all freight to be shipped therefrom or destined thereto, and shall and will take and deliver the same over its lines at the same rates (except in case of traffic hauled short distances upon which it is customary for the Railroad Company to apply rates varying with respect to different station deliveries in the City of Philadelphia) and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

B. To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight, both incoming and outgoing, the amounts following:—Three and one-half (3½) cents per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half (2½) cents per barrel for each

barrel over the said fifty thousand (50,000) barrels per month and thirty-five (35) cents per ton (of two thousand pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor material and supplies belonging to the Railroad Company.

The Warehouse Company hereby covenants and agrees to and with the Railroad Company, as follows:

I. To pay to the Railroad Company the rent hereby reserved on the days and times hereinbefore mentioned for the payment thereof, together with said further rental equal to the amount of all taxes, water rent and other assessments payable against said premises, to be paid when demanded and the cost of maintaining said amount of fire insurance; and during the continuance of this lease to keep said premises in good order and repair at its own cost and expense and at the end of said term or other sooner determination of this lease to peaceably deliver up possession of said premises in the like good order and condition, ordinary wear and tear and damage by fire and unavoidable accidents only excepted, and will not under penalty of forfeiture of this lease commit or suffer to be committed any act or thing whereby or in consequence whereof the conditions or stipulations of the policy or [fol. 752] policies of insurance on the said premises shall become avoided or suspended, or occupy or permit to be occupied the said premises otherwise than as a warehouse for the storage of general merchandise, that it will not assign this lease, or the term hereby created, or underlet the said premises, or any part thereof, without the written consent of the Railroad Company endorsed hereon, an assignment within the meaning of this lease being understood and intended to comprehend not only the voluntary action of the Warehouse Company but also every levy or sale on execution, or other legal process, and every assignment or sale in bankruptcy or insolvency, or under any other compulsory procedure or order of court.

II. a. To use all reasonable efforts to secure to the lines of The Pennsylvania Railroad Company's system, of which

the railroad of Railroad Company forms part, all traffic controlled by it or destined to or from the warehouse aforesaid, and to accord to traffic passing over said lines, at all times, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines; it being further understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

b. To promptly load, unload and handle all freight received by it to be shipped over the lines of Railroad Company or received by it for delivery to consignees, and in the case of incoming freight to promptly notify consignees of the arrival thereof.

c. To be responsible to Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by Warehouse Company to Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure Railroad Company, Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount as shall be approved by Railroad Company, conditioned for the prompt payment of the said freight and other charges and for the performance by Warehouse Company of all its other covenants hereunder.

d. To indemnify and hold harmless Railroad Company for all damage to, or loss of, freights in its custody or control, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight.

e. To promptly notify Railroad Company in writing of [fol. 753] the failure of any consignee to remove freight, and to observe and comply with all directions with respect to such freight which may be received by it from Railroad Company.

f. To protect and indemnify the Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it

at said warehouse, to be forwarded over the Railroad Company's lines or to be delivered to consignees, and also from and against all manner of liability on account of receipts for merchandise issued by it.

III. If, even without any previous demand, it shall fail or omit to pay the rents or sums hereby reserved when the same are made payable or shall in any other respect violate or fail to comply with any of the conditions and covenants herein contained, then this lease, and the term hereby created and any renewal thereof shall at the option of the Railroad Company to be signified by a written notice of its intention so to determine this lease, on a day therein fixed, delivered to it, or left on the premises, at least thirty days previous to the day so fixed, determine and become absolutely void, without any right on its part after the day so fixed to save the forfeiture by payment of rent due, or by other performance of the condition or conditions thus violated. That when the lease shall be so determined by condition broken and notice as aforesaid, and also when and as soon as the term hereby created shall have expired, it shall be lawful for any attorney as attorney for the Warehouse Company to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against it and all persons claiming under it for the recovery by the Railroad Company of the possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon, if the Railroad Company so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, it hereby releasing and agreeing to release the Railroad Company from all errors and defects whatsoever in entering such action or judgment or causing such possessory writ to be issued, or in any proceedings thereon, or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto, provided that the Railroad Company shall first cause to be filed in such action an affidavit made by some person on its behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, and if a true copy of this lease shall be annexed to such affidavit, it shall not be necessary to file the original as a warrant of attorney, any

rule of court to the contrary notwithstanding. No such determination of this lease, nor taking nor recovering possession of the premises shall deprive the Railroad Company of any remedy or action against it, for rent, or for [fol. 754] damages, for the breach of any covenant herein contained, nor shall the bringing of any such action for rent or breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach be construed as a waiver of the right to insist upon the forfeiture and obtain possession in the manner hereinafter provided.

It is hereby mutually agreed:

1. That at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignee, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do and shall be further entitled to dispose of the same in such manner and at such times as it may lawfully and properly do for the purpose of realizing its charges thereon.

2. The Warehouse Company shall have the right to renew this agreement for a further period of ten (10) years from the first day of July, nineteen hundred and twenty-six (1926), under all the terms, covenants, conditions and provisions herein contained, upon giving to the Railroad Company six (6) months notice prior to the expiration of the term hereby created, but such renewal thereof shall not contain a provision for a renewal for a further period of ten years; Provided, however, that should the Railroad Company require the above demised premises or any part thereof for its corporate purposes it shall have the right upon giving six (6) months notice to the Warehouse Company to terminate this agreement at any time

during the term hereby created or any renewal thereof and upon the expiration of the time mentioned in such notice this agreement and any renewal thereof shall absolutely determine and the Warehouse Company shall quit and deliver up possession of the said premises to the Railroad Company; in case of such determination by the Railroad Company and other warehouse facilities are provided by either the Railroad Company or the Warehouse Company to take the place of the above demised premises, and if the Warehouse Company shall occupy such new facilities, then the same terms, conditions, covenants and provisions pertaining to traffic and the handling of freight to and from the warehouse and the compensation therefor, as are contained in this agreement shall govern and control the traffic conditions and the handling of freight to and from the new warehouse facilities and the compensation therefor.

[fol. 755] 3. If, during the term of this lease, the warehouse is so injured by fire or other casualty not occurring through the Warehouse Company's negligence, that it is rendered wholly unfit for occupany, and cannot be repaired within sixty days from the happening of such injury, then this lease shall cease and determine from the date of such injury. In such case the Warehouse Company shall pay the rent apportioned to the time of injury and shall immediately surrender the whole of the leased premises to the Railroad Company who may enter upon and repossess the same. If such injury can be repaired within sixty days thereafter the Railroad Company may enter and repair, and this lease shall not be affected, except that the rent shall be apportioned and suspended while such repairs are being made; but if said warehouse shall be so slightly injured by fire or other casualty as not to be rendered unfit for occupancy, then the Railroad Company agrees that the same shall be repaired with reasonable promptitude, and in that case the rent accrued or accruing shall not cease or determine.

4. That if the terms and conditions of this agreement shall be found to work onerously to the interests of either party hereto, the said terms and conditions shall, at the written request of either party be subject to revision at the end of any period of two (2) years; and if the parties hereto cannot agree upon such revision, or any question

shall arise as to the proper construction of any of the provisions herein contained, or differences as to any act or duty claimed to be involved in the performance hereof, if the same cannot be amicably adjusted then the same shall be settled by arbitration as follows:

The party demanding the reference shall serve upon the other party a notice of such demand, stating the question upon which it demands the judgment of the referees and the name of one referee by it chosen. The party so notified shall, within ten days after receiving such notice, select a second referee and notify the other party thereof in writing, or if it shall fail to select a referee, the referee selected by the party demanding the reference shall select the second referee. The referees so selected shall within a reasonable time meet and select a third referee and fix a time and place for hearing the parties, of which they shall be notified in writing. If any referee shall refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said referees made after hearing the party or parties who have attended in compliance with the notice required to be given, as above stated, shall be final and binding on the parties, and they severally hereby expressly agree to be bound thereby.

That all the rights and liabilities herein given to or im-
[fols. 756 & 757] posed upon either of the parties hereto shall extend to the successors and assigns of such party as though they were in each case named, unless whereof the assigns are expressly excluded from certain rights.

In witness whereof the parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

Philadelphia, Baltimore and Washington Railroad Company, by W. H. Myers, Vice-President. Attest: J. Taney Willcox, Asst. Secretary. Merchants Warehouse Company, by Harvey C. Miller, President. Attest: Charles Hay, Secretary. (Seal.)

[Canceled 50-cent internal-revenue stamp.]

[fol. 758] 10

This indenture, made this 1st day of July nineteen hundred and sixteen (1916) between The Pennsylvania Rail-

road Company, hereinafter called "Railroad Company," of the one part, and the Merchants Warehouse Company, hereinafter called "Warehouse Company," of the other part.

Witnesseth, That the Railroad Company for and in consideration of the rents and covenants and agreements hereinafter mentioned, which on the part of the Warehouse Company are to be paid, kept and performed, hath demised and let and by these presents doth demise and let unto the Warehouse Company, all that certain lot or piece of land with the warehouse thereon erected, situated in the Twenty-seventh Ward of the City of Philadelphia, Beginning at a point distant thirty-nine and nine-tenths feet southwardly, measured at right angles, from the south side of Chestnut Street, two hundred feet eight and one-half inches eastwardly from east side of Thirty-second Street, containing in front parallel with Chestnut Street and thirty-nine and nine-tenths feet distant southwardly therefrom, one hundred and ten and three-tenths feet and extending of that width in length or depth between parallel lines southward four hundred and forty and one-tenth feet to the north side of Walnut Street; together with the right of ingress and egress over other land of the Railroad Company lying between the herein demised premises and the south side of Chestnut Street, in common with the owners, tenants and occupants of said land at all times during the continuance of this lease.

To hold the said premises for and during the term of ten (10) years, from the first day of July, nineteen hundred and sixteen (1916), at and for the rent or sum of seven thousand dollars ($7,000.00) per year, to be paid in equal monthly payments, not in advance, on the first day of each and every month during said term; together with a further rental which shall be equal to the amount of all taxes, not exceeding the sum of fifteen hundred dollars ($1500.00) per year, and all the water rent and other assessments levied, assessed and payable against said premises, to be paid to the Railroad Company when demanded.

The Railroad Company hereby covenants and agrees to and with the Warehouse Company as follows:

A. To maintain railroad tracks adjacent to said warehouse, and to do the necessary shifting to enable its cars

to reach the warehouse aforesaid for the purpose of taking [fol. 759] from and delivering to the same all freight to be shipped therefrom or destined thereto, and shall and will take and deliver the same over its lines at the same rates (except in case of traffic hauled short distances upon which it is customary for the Railroad Company to apply rates varying with respect to different station deliveries in the City of Philadelphia) and in the same manner and with the same promptness that it delivers and receives like traffic at any other terminal point controlled by it in the City of Philadelphia.

B. To pay to the Warehouse Company for all services rendered by it in and about the receipt and delivery of freight, both incoming and outgoing, thirty-five cents (35¢) per ton (of two thousand pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight, nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor material and supplies belonging to the Railroad Company.

The Warehouse Company hereby covenants and agrees with the Railroad Company, viz:

I. To pay to the Railroad Company the rent hereby reserved on the days and times hereinbefore mentioned for the payment thereof, together with said further rental equal to the said amount of taxes and all water rent and other assessments levied or charged upon the said premises, and to keep the said demised premises in good order and repair during the continuance of this lease and at the end of the said term or sooner determination of said lease to peaceably deliver up possession of the said premises in the like good order and condition, ordinary wear and tear and casualties by fire and unavoidable accidents only excepted; and will not under penalty of forfeiture of this lease commit or suffer to be committed any act or thing whereby or in consequence whereof the conditions or stipulations of the policy or policies of insurance on the said premises shall become avoided or suspended; or occupy or permit to be occupied the said premises otherwise than as a warehouse for the storage of hay, straw, feed and other freight; it being agreed by the Warehouse Company that it will at

all times provide sufficient space for the proper handling and storage of hay; that it will not assign this lease or the term hereby created or underlet the said premises or any part thereof, without the written consent of the Railroad Company endorsed hereon, an assignment within the meaning of this lease being understood and intended to comprehend not only the voluntary action of the Warehouse Company but also every levy or sale on execution or other legal process and every assignment or sale in bankruptcy or insolvency or under any other compulsory procedure or order of court; and that upon the happening of any legal pro- [fol. 760] ceedings, the effect of which shall be to divest the title or possession of the Warehouse Company, this agreement shall *be* at the option of the Railroad Company cease and determine.

II. a. To use all reasonable efforts to secure to the lines of The Pennsylvania Railroad Company's system, of which the railroads of Railroad Company form part all traffic controlled by it or destined to or from the warehouse aforesaid, and to accord to traffic passing over said lines, at all times, preference in the facilities furnished by the Warehouse Company over traffic passing over other lines, it being further understood that without the consent of the Railroad Company the said facilities shall not be extended to traffic passing over other lines.

b. To promptly load and unload and handle all freight received by it to be shipped over the lines of Railroad Company, or received by it for delivery to consignee and in the case of incoming freight to promptly notify consignees of the arrival thereof.

c. To be responsible to Railroad Company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by Warehouse Company to Railroad Company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the Railroad Company may, from time to time, elect to collect direct from any consignee; and in order to secure Railroad Company, Warehouse Company shall furnish to it a bond with such good and sufficient sureties, and in such amount as shall be approved by Railroad

Company, conditioned for the prompt payment of the said freight and other charges and for the performance by Warehouse Company of all its other covenants hereunder.

d. To indemnify and hold harmless Railroad Company for all damage to, or loss of, freights in its custody or control, and all liability by reason thereof, and to keep an adequate and sufficient line of fire insurance on all such freight.

e. To promptly notify Railroad Company in writing of the failure of any consignee to remove freight, and to observe and comply with all directions with respect to such freight which may be received by it from Railroad Company.

f. To protect and indemnify Railroad Company from and against all manner of liability on account of any acts of omission or commission on the part of it, the said Warehouse Company, in respect to merchandise received by it at said Warehouse to be forwarded over the Railroad Company's lines or to be delivered to consignees and also from and against all manner of liability on account of receipts for merchandise issued by it.

It is hereby mutually understood and agreed:

[fol. 761] 1. That at the expiration of the period during which the Railroad Company shall currently allow freight to remain at its warehouses before delivery without charge to the consignees, freight delivered by the Railroad Company to the Warehouse Company which has not been delivered to the consignee, or party entitled to receive the same, or which shall not by direction of said Railroad Company have been returned to the shipper thereof, or otherwise disposed of, shall be regarded and treated as stored with Warehouse Company by Railroad Company for account of the owners thereof, and thereupon the Warehouse Company shall be entitled to deal with the property and to make such charges for its custody as it may lawfully and properly do, and shall be further entitled to dispose of the same in such manner, and at such times, as it may lawfully and properly do, for the purpose of realizing its charges thereon.

2. If, during the term of this lease, the warehouse is so injured by fire or other casualty not occurring through the

Warehouse Company's negligence that it is rendered wholly unfit for occupancy and cannot be repaired within sixty days from the happening of such injury, then this lease shall cease and determine from the date of such injury. In such case the Warehouse Company shall pay the rent apportioned to the time of injury, and shall immediately surrender the whole of the leased premises to the Railroad Company who may re-enter upon and repossess the same. If such injury can be repaired within sixty days thereafter the Railroad Company may enter and repair, and this lease shall not be affected, except that the rent shall be apportioned and suspended while such repairs are being made; but if said warehouse shall be so slightly injured by fire or other casualty as not to be rendered wholly unfit for occupancy, then the Railroad Company agrees that the same shall be repaired with reasonable promptitude and in that case the rent accrued or accruing shall not cease or determine.

3. The Warehouse Company shall have the right to renew this agreement for a further period of ten (10) years from the first day of July nineteen hundred and twenty-six (1926), under all the terms, covenants, conditions and provisions herein contained, upon giving to the Railroad Company six months notice prior to the expiration of the term hereby created, but such renewal thereof shall not contain a provision for a renewal for a further period of ten years; Provided, however, that should the Railroad Company require the above demised premises or any part thereof for its corporate purposes it shall have the right upon giving ninety days *days* notice to the Warehouse Company to terminate this agreement at any time during the term hereby created or any renewal thereof and upon the expiration of the time mentioned in such notice this agreement and any renewal thereof shall absolutely determine and the Warehouse Company shall quit and de-
[fol. 762] liver up possession of the said premises to the Railroad Company; in case of such determination by the Railroad Company and other warehouse facilities are provided by either the Railroad Company or the Warehouse Company to take the place of the above demised premises, and if the Warehouse Company shall occupy such new facilities, then the same terms, conditions, covenants and pro-

visions pertaining to traffic and the handling of freight to and from the warehouse and the compensation therefor, as are contained in this agreement shall govern and control the traffic conditions and the handling of freight to and from the new warehouse facilities and the compensation therefor.

4. If, even without any previous demand, the Warehouse Company shall fail or omit to pay the rents or sums hereby reserved when the same are made payable or shall in any other respect violate or fail to comply with any of the conditions and covenants herein contained, then this lease and the tenancy thereunder shall, at the option of the Railroad Company, to be signified by a written notice of its intention so to determine this lease, on a day therein fixed, delivered to it, or left on the premises, at least thirty days previous to the day so fixed, determine and become absolutely void, without any right on its part, after the day so fixed, to save the forfeiture by payment of rent due, or by other performance of the condition or conditions thus violated. That when the lease shall be so determined by condition broken and notice as aforesaid, it shall be lawful for any attorney as attorney for the Warehouse Company, to sign an agreement for entering in any competent court an amicable action and judgment in ejectment (without any stay of execution) against the Warehouse Company and all persons claiming under it for the recovery by the Railroad Company of the possession of the hereby demised premises, for which this shall be a sufficient warrant, whereupon, if the Railroad Company so desires, a writ of habere facias possessionem may issue forthwith, without any prior writ or proceedings whatsoever, the Warehouse Company hereby releasing and agreeing to release the Railroad Company from all errors and defects whatsoever in entering such action or judgment or causing such possessory writ to be issued, or in any proceedings thereon, or concerning the same, and hereby agreeing that no writ of error or objection or exception shall be made or taken thereto; Provided, that the Railroad Company shall first cause to be filed in such action an affidavit made by some one on its behalf, setting forth the facts necessary to authorize the entry of such judgment according to the terms of this lease, and if a true copy of this lease shall be an-

nexed to such affidavit, it shall not be necessary to file the original as a warrant of attorney, any rule of court to the contrary notwithstanding. No such determination of this lease, nor taking or recovering possession of the premises shall deprive the Railroad Company of any remedy [fol. 763] or action against the Warehouse Company for rent or for damages, for the breach of any covenant herein contained, nor shall the bringing of any such action for rent or for breach of covenant, nor the resort to any other remedy herein provided for the recovery of rent or damages for such breach be construed as a waiver of its right to insist upon the forfeiture and obtain possession in the manner hereinabove provided.

5. That if the terms and conditions of this agreement shall be found to work onerously to the interests of either party hereto, the said terms and conditions shall, at the written request of either party be subject to revision at the end of any period of two years; and if the parties hereto cannot agree upon such revision, or any question shall arise as to the proper construction of any of the provisions herein contained, or differences as to any act or duty claimed to be involved in the performance hereof, if the same cannot be amicably adjusted then the same shall be settled by arbitration as follows:

The party demanding the reference shall serve upon the other party a notice of such demand, stating the question upon which it demands the judgment of the referees and the name of one referee by it chosen. The party so notified shall, within ten days after receiving such notice, select a second referee and notify the other party thereof in writing, or if it shall fail to select a referee, the referee selected by the party demanding the reference shall select the second referee. The referees so selected shall within a reasonable time meet and select a third referee and fix a time and place for hearing the parties, of which they shall be notified in writing. If any referee shall refuse to act, the party by whom he was chosen shall select another to act in his place. The award of any two of said referees made after hearing the party or parties who have attended in compliance with the notice required to be given, as above stated, shall be final and binding on the parties, and they severally hereby expressly agree to be bound thereby.

That all the rights and liabilities herein given to or imposed upon either of the parties hereto shall extend to the successors and assigns of such party as though they were in each case named, unless where the assigns are expressly excluded from certain rights.

In witness whereof the parties hereto have hereunto af- [fols. 764 & 765] fixed their respective corporate seal, duly attested, the day and year first above written.

The Pennsylvania Railroad Company, by W. H. Myers, Vice-President. Attest: Lewis Wilson, Secretary. (Seal.) Merchants Warehouse Company, by Harvey C. Miller, President. Attest: Charles Hay, Secretary. (Seal.)

[Canceled 50-cent internal-revenue stamp.]

[fol. 766] 11

Copy

Quaker City Cold Storage Company, Delaware Avenue, Spruce and Water Sts., Philadelphia, Pa.

September 8, 1922.

Pennsylvania Railroad Co., Traffic Department, Broad Street Station, Philadelphia, Penna.

Attention of Mr. J. L. Eysmans

Dear Sirs: We have your letter of August 30th, 1922 in reference to conditions governing our traffic agreement with you in supplementing your letter of August 9th, and our acceptance of August 15th of this year, wherein it is understood that we are to receive from your company fifty cents (50¢) per ton for services performed for the handling of butter, eggs, dressed poultry and cheese arriving via your line to our property Delaware Avenue, Spruce and Water Streets, known by your company as the "Spruce Street Stores", and we accept the conditions as expressed in your letter of August 30th as being a supplement of our traffic agreement with you as mentioned in the above letters.

Yours very truly, Quaker City Cold Storage Company. Horace P. Serrill, President.

[fol. 767] Copy

J.—. L.

You will, of course, now arrange to have all concerned notified of this arrangement so that the traffic may be solicited and routed via our own line instead of via Harrisburg and the P. & R. and Mr. Willis should advise Agent Dock Street in detail of the arrangements that have been made.

J. L. E.

August 30, 1922.

Mr. Horace P. Serrill, President, Quaker City Cold Storage Co., Philadelphia, Pa.

Dear Sir: I enclose herewith copy of supplement No. 7 to Tariff G. O. I. C. C. 11688, which you will note on Page 4 provides allowance of 50¢ per ton to the Quaker City Cold Storage Co.—Spruce Street Stores, effective as follows:

On inbound less than carload shipments of butter, cheese, eggs and dressed poultry, September 15th.

On inbound carload shipments of butter, cheese, eggs and dressed poultry, October 1st.

The Interstate Commerce Commission would not allow us to publish on less than statutory notice the allowance covering carloads, which will account for the difference in the effective dates.

I also enclose copy of Supplement No. 31 to Tariff G. O. I. C. C. 10000, which on page 5 shows that Dock Street Station includes all the facilities of the Quaker City Cold Storage Co.—Spruce Street Stores, and becomes effective September 15th on both carloads and less than carloads.

Yours very truly, J. L. Eysmans, Traffic Manager.

JLE-s.

CC—Messrs. Robt. C. Wright, Elisha Lee, C. S. Krick, with enc.; E. A. Stockton, with enc.; J. F. Fahnestock, with enc.; E. H. Newbern, with enc.; J. B. Large, with enc., in connection with my letters of August 18th.

[fol. 768] Copy

August 30, 1922.

Mr. Horace P. Serrill, President, Quaker City Cold Storage Co., Philadelphia, Pa.

Dear Sir: Supplementing my letter to you of August 9th specifying the conditions under which you would operate Spruce Street Stores for the handling of Butter, Eggs, Dressed Poultry and Cheese arriving via our line and for which it was understood we would pay you 50¢ per ton for services performed, I find that we did not specifically cover the following although these matters were discussed at our conference on the 9th:

With respect to property moving under Order bills of lading, the legal possession of the property shall continue with P. R. R. until the bill of lading has been duly surrendered, and the Quaker City Cold Storage Co. shall not make delivery of such property until such surrender of the bill of lading.

Another condition that should be specifically understood is that the proposed allowance of 50¢ per ton shall apply to services on the traffic in question handled at the Quaker City Cold Storage Company's plant, formerly known as the Spruce Street Stores, located on the Southwest Corner of Delaware Avenue & Spruce Street.

Will you kindly acknowledge the foregoing as a part of the understanding and conditions to be added to my letter to you of August 9, 1922, advising, and oblige.

Yours very truly, J. L. Eysmans, Traffic Manager.

JLE-a.

[fol. 769] Copy

August 17, 1922.

Mr. Horace P. Serrill, Pres. Quaker City Cold Storage Co., Delaware Avenue & Spruce St., Philadelphia, Pa.

Dear Sir: The terms of acceptance, as outlined in your letter of August 15th, of the working arrangements between your company and ours for the handling of dairy products, set forth in my letter to you of August 19th, is entirely agreeable.

As soon as we hear from the Interstate Commerce Commission regarding the publication of the tariffs, I will let you know date the arrangement is to become effective. In the meantime, we will request the Accounting, Treasury and Insurance Departments to get in touch with you regarding the details of records, bond and insurance.

Yours very truly, J. L. Eysmans, Traffic Manager.

JLE-s.

[fol. 770] Copy

Quaker City Cold Storage Co., Phila., Pa.

August 15, 1922.

Pennsylvania Railroad Co., Traffic Department, Broad St. Station, Phila., Pa.

Attention of Mr. J. L. Eysmans

GENTLEMEN: We are in receipt of your letter of August 9th, 1922, in reference to our company handling dairy products over your lines, excluding traffic handling in switching service or delivered by connecting lines to the Pennsylvania System at junctions in Philadelphia. And in accordance with the understanding had by your company with our Mr. Serrill, and in further conformance with the terms of your letter of August 9th, we will accept your proposal in full as contained in items 1, 2, 3, 4, 5, 6 and 7. It being understood, however, under the terms of Section 4, wherein it is stated that we are to indemnify and hold harmless your company for all damages to or loss in freight while in our custody or control, and all liability by reason thereof after delivery by the Railroad Company to our Company, that such liability therein specified is only such liability as is concurrent with the duties of any other agent under similar conditions, that is—upon receipt of all cars we will notify your company of the condition of the seal on the car, and upon the breaking of the seal we will also notify your company as to the quantity and quality of the goods contained in the car, and will also notify you of any apparent shortage or damage to the goods contained in the car. But is is understood further, nevertheless, that after

the goods are unloaded, on our platform, we will be liable for such goods either damaged or lost.

Hoping this is satisfactory to your company and appreciating your kindness in this matter, as we feel this arrangement will be of mutual benefit to each company, we remain,

Yours very truly, Quaker City Cold Storage Co.
H. P. Serrill, President.

[fol. 771] Copy

August 9, 1922.

Mr. Horace P. Serrill, Pres. Quaker City Cold Storage Co.,
Philadelphia, Pa.

DEAR SIR: In accordance with understanding reached at our conference here today, our Company will agree to allow your company 50¢ per ton of 2,000 pounds for the handling of dairy products, viz: Butter, Eggs, Dressed Poultry and Cheese, transported over our line, excluding traffic handled in switching service, or delivered by connecting lines to the Penna. System at functions in Philadelphia, under the following conditions:

1st. The Pennsylvania R. R. shall publish in its tariff that the Quaker City Cold Storage Company is a point of delivery to which the above named commodities may be consigned.

2nd. The Pennsylvania R. R. will shift cars containing these commodities to your plant for unloading without cost.

3rd. The Quaker City Cold Storage Co. to act as agent for the Railroad Company in unloading cars, promptly notifying consignees of arrival, delivery to consignees and collection of freight charges, allowing the same free time to consignee as provided for in public tariffs of the Railroad Company. Beyond the free time period, as afore stated, the Quaker City Cold Storage Company shall have the right to charge consignees for storage of any freight held beyond the free time period, or for any service rendered or facilities furnished by it, at customary rates.

4th. The Quaker City Cold Storage Company to indemnify and hold harmless the Railroad Company for all damage to or loss of freight while in its custody or control, and all liability by reason thereof after delivery by the

Railroad Company to the Quaker City Cold Storage Co.; and in order to properly protect the Railroad Company in this respect the Quaker City Cold Storage Company shall furnish a bond under conditions prescribed by the Treasurer of the Railroad Company.

5th. The Quaker City Cold Storage Co. will, to the best of its ability, provide sufficient space to accommodate the traffic, which will arrive currently under this arrangement, and will give preference in the handling of traffic tendered for delivery by the Penna. Railroad under this arrangement over other traffic; the Quaker City Cold Storage Company to at all times use its best endeavors and influence in routing freight over the Penna. System.

6th. This arrangement to be terminable on thirty (30) days' written notice by either party, with sufficient grace to allow the Railroad Company to issue necessary changes in tariffs.

[fol. 772] 7th. The effective date of the arrangement to be the date of the published tariff authorizing the allowances becomes effective.

The details for the collection of freight charges and records in connection therewith are to be arranged subject to such regulations as may be worked out between our Auditor and your Company.

I will arrange with our Insurance Department to carry insurance to cover freight during the period that free storage must be accorded.

Will you please write me at your early convenience of the acceptance of the arrangement under conditions specified. If later on a formal agreement seems desirable we can arrange to proceed accordingly.

Yours very truly, J. L. Eysmans, Traffic Manager.

[fol. 773] COMPLAINANTS EXHIBIT #4

American Chain of Warehouses, Inc.

Membership Directory, Fall Edition, 1927

Established, 1911

[fol. 774] The warehouses listed in this Directory are so located as to furnish shippers Nation-wide distribution of their merchandise.

Chain warehouses are well located in their respective cities, operating up-to-date and well equipped warehouses, and maintaining efficient organizations. Shippers are thus assured that in dealing with members of the American Chain of Warehouses, Inc. that their account will be handled to their complete satisfaction.

The nearest Chain representative will gladly consult with you and furnish complete information in connection with the storage and distribution of your merchandise through any Chain warehouse.

O. V. Hukill, Eastern Representative, 260 West Broadway, New York City. Phone: Walker 7195.
W. H. Eddy, Western Representative, 53 West Jackson Boulevard, Room 1010, Chicago, Illinois. Phone: Harrison 1496.

[fol. 775] List of Members

Alabama

Birmingham:

Warrant Warehouse Company,
3500 Ave. A. Tel. 4-1036.
Inv. $425,000. Floor Space: 112,000 sq. ft.
Routing: All Lines. Insurance: 18c.
Est. 1900. Bank Reference: First National Bank.

Mobile:

Warant Warehouse Company,
Water & Lipscombe Streets. Tel. 115.
Inv. $800,000. Floor Space: 337,000 sq. ft.
Routing: All Lines. Insurance: 27c.
Est. 1913. Bank Reference: First National Bank.

Montgomery:

Moeller Transfer & Storage Company, Inc.,
210 Coosa Street. Tel. 600.
Cap. $25,000. Floor Space: 25,000 sq. ft.
Routing: Western Railway of Alabama. Insurance: 37½c.
Est. 1922. Bank Reference: Alabama National Bank.

Arkansas

Little Rock:

Terminal Warehouse Company,
812 East 2nd Street. Tel. 4-0637.
Cap. $300,000. Floor Space: 190,000 sq. ft.
Routing: All Lines. Insurance: 18c.
Est. 1913. Bank Reference: American Southern Trust Company.

Texarkana:

Hunter Transfer & Storage Company,
319 East First Street. Tel. 381.
Cap. $70,000. Floor Space: 21,000 sq. ft.
Routing: All Lines. Insurance: 28c.
Est. 1884. Bank Reference: State National Bank.

California

Los Angeles:

Union Terminal Warehouse Company,
731 Terminal Street. Tel. Metropolitan: 0075.
Inv. $185,000. Floor Space: 743,000 sq. ft.
Routing: All Lines. Insurance: 16c.
Est. 1916. Bank Reference: First National Bank.

San Francisco:

The Haslett Warehouse Company,
60 California Street. Tel. Kearny: 2522.
Inv. $1,500,000. Floor Space: 900,000 sq. ft.
Routing: All Lines. Insurance: 16c.
Est. 1879. Bank Reference: Bank of California, N. A.

Colorado

Denver:

The Weicker Transfer & Storage Company,
1700 — 15th Street. Tel. Main: 3288.
Inv. $1,000,000. Floor Space: 250,000 sq. ft.
Routing: All Lines. Insurance: 13c.
Est. 1904. Bank Reference: U. S. National.

Connecticut

Hartford:

Hartford Despatch & Warehouse Company,
249 Asylum Street. Tel. Laurel: 1000.
Inv. $275,000. Floor Space: 100,000 sq. ft.
Routing: N. Y., N. H. & Hartford. Insurance: 40c.
Est. 1921. Bank Reference: Hartford Trust Company.

[fol. 776]

District of Columbia

Washington:

Merchants Transfer & Storage Company,
920 E Street, N. W. Tel. Main: 6900.
Cap. $2,000,000. Floor space: 135,000 sq. ft.
Insurance: 46c.
Est. 1901. Bank Reference: Union Trust Company.

Florida

Jacksonville:

Union Terminal Warehouse Company,
East Union & Ionia Streets. Tel. 5-6681.
Inv. $1,000,000. Floor Space: 333,000 sq. ft.
Routing: All Lines. Insurance: 20c.
Est. 1918. Bank Reference: Atlantic National.

Orlando:

Orlando Storage Warehouse, Inc.,
63 West Jefferson Street. Tel. 6463.
Cap. $10,000. Floor Space: 55,000 sq. ft.
Routing: All Lines. Insurance: 85c.
Est. 1923. Bank Reference: Church Street Bank.

St. Petersburg:

Southern Transfer & Storage Company,
1901 Fifth Avenue. Tel. 48-213.
Cap. $15,000. Floor Space: 15,000 sq. ft.
Routing: All Lines. Insurance: $2.48.
Est. 1925. Bank Reference: Central Nat'l & Trust Company.

Georgia

Atlanta:

Merchants & Manufacturers' Warehouse Company,
29 Haynes Street, N. W. Tel. Main: 907.

Cap. $25,000. Floor Space: 60,000 sq. ft.
Routing: All Lines. Insurance: 30c.
Est. 1910. Bank Reference: Fourth National Bank.

Augusta:

Hollingsworth Warehouses,
556 Walker Street. Tel. 1418.
Inv. $10,000. Floor Space: 20,000 sq. ft.
Routing: All Lines. Insurance: $1.40.
Est. 1900. Bank Reference: Georgia Railroad Bank.

Savannah:

Savannah Bonded Warehouse & Transfer Company,
Bay St., Extension & Canal. Tel. 920.
Inv. $25,000. Floor Space: 50,000 sq. ft.
Routing: All Lines. Insurance: 65c.
Est. 1913. Bank Reference: The Citizens & Southern National Bank.

Illinois

Chicago:

The Midland Warehouse & Transfer Company,
1500 South Western Avenue. Tel. Canal: 6811.
Cap. $400,000. Floor Space: 814,000 sq. ft.
Routing: All Lines. Insurance: 15c.
Est. 1907. Bank Reference: Central Manufacturing District Bank.

Rock Island:

Rock Island Transfer & Storage Company,
101 — 17th Street. Tel. 985.
Inv. $150,000. Floor Space: 40,000 sq. ft.
Routing: All Lines. Insurance: 29c.
Est. 1919. Bank Reference: Rock Island Savings Bank.

Peoria:

Federal Warehouse Company,
800 South Adams Street. Tel. 4-5138.
Inv. $500,000. Floor Space: 140,000 sq. ft.
Routing: All Lines. Insurance: 15c.
Est. 1915. Bank Reference: Commercial National Bank.

Indiana

Evansville:

Terminal Warehouse Company,
915 Main Street. Tel. Main: 140.
Cap. $25,000. Floor Space: 24,000 sq. ft.
Routing: All Lines. Insurance: 33c.
Est. 1926. Bank Reference: Old National Bank.

[fol. 777] Fort Wayne:

Pettit's Storage Warehouse Company,
414 East Columbia Street. Tel. A: 1108.
Inv. $200,000. Floor Space: 90,000 sq. ft.
Routing: All Lines. Insurance: Approx. 80c.
Est. 1908. Bank Reference: First National Bank.

Indianapolis:

Tripp Warehouse Company,
620 South Capital Avenue. Tel. Drexel: 4948.
Inv. $150,000. Floor Space: 140,000 sq. ft.
Routing: All Lines. Insurance: 16c.
Est. 1913. Bank Reference: Security Trust Company.

Iowa

Davenport:

Ewert & Richter Express & Storage Company,
320 East 4th Street. Tel. Dav: 543.
Cap. $300,000. Floor Space: 100,000 sq. ft.
Routing: All Lines. Insurance: 39c.
Est. 1904. Bank Reference: Iowa National Bank.

Des Moines:

Merchants Transfer & Storage Company,
9th & Mulberry Streets. Tel. Walnut: 470.
Cap. $100,000. Floor Space: 240,000 sq. ft.
Routing: All Lines. Insurance: 76c.
Est. 1894. Bank Reference: Iowa National Bank.

Fort Dodge:

Brady Transfer & Storage Company,
16th & Central Avenue. Tel. Walnut: 2125.
Cap. $200,000. Floor Space: 52,000 sq. ft.

Routing: All Lines. Insurance: 15c.
Est. 1914. Bank Reference: Fort Dodge National Bank.

Sioux City:

Bekins Van & Storage Company,
5th & Wesley Streets. Tel. 83561.
Cap. $250,000. Floor Space: 40,000 sq. ft.
Routing: All Lines. Insurance: 26c.
Est. 1890. Bank Reference: Sioux National Bank.

Kansas

Wichita:

Brokers' Office & Warehouse Company,
143 North Rock Island Avenue. Tel. Market: 2410.
Cap. $200,000. Floor Space: 65,000 sq. ft.
Routing: All Lines. Insurance: 74c.
Est. 1923. Bank Reference: First National Bank.

Kentucky

Lexington:

Union Transfer Company, Inc.,
Vine & Spring Streets. Tel. 417.
Inv. $150,000. Floor Space: 63,500 sq. ft.
Routing: All Lines. Insurance: 22c.
Est. 1920. Bank Reference: Bank of Commerce.

Louisville:

Louisville Public Warehouse Company, Inc.,
131 East Main Street. Tel. City: 863.
Cap. $1,000,000. Floor Space: 822,154 sq. ft.
Routing: All Lines. Insurance: 14c.
Est. 1884. Bank Reference: Citizens-Union National Bank.

Louisiana

New Orleans:

United Warehouse Company, Ltd.,
815 South Front Street. Tel. Jackson: 5546.
Inv. $160,000. Floor Space: 122,500 sq. ft.
Routing: All Lines. Insurance: Base 35c.
Est. 1869. Bank Reference: Canal Bank & Trust Co.

Shreveport:

Herrin Transfer & Warehouse Company, Inc.
1305 Marshall Street. Tel. 4279.
Inv. $100,000. Floor Space: 80,000 sq. ft.
Routing: All Lines. Insurance: 48c.
Est. 1910. Bank Reference: First National Bank.

[fol. 778] Maine

Bangor:

McLaughlin Warehouse Company,
45 Front Street. Tel. 13.
Cap. $10,000. Floor Space: 47,000 sq. ft.
Routing: Maine Central. Insurance: $1.27.
Est. 1875. Bank Reference: Merrill Trust Company.

Portland:

Galt Block Warehouse Company,
20 Commercial Street. Tel. Forest: 5570.
Inv. $160,000. Floor Space: 160,000 sq. ft.
Routing: All Lines. Insurance: 26c.
Est. 1872. Bank Reference: Chapman National Bank.

Massachusetts

Worcester:

Bowler Storage & Sales Company,
81 Lafayette Street. Tel. Park: 194.
Cap. $100,000. Floor Space: 50,000 sq. ft.
Routing: N. Y., N. H. & Hartford R. R. Insurance: 32c.
Est. 1921. Bank Reference: Merchants National Bank.

Michigan

Detroit:

Edgar's Sugar House,
1924 Lafayette Boulevard. Tel. Lafayette: 0008.
Cap. $400,000. Floor Space: 400,000 sq. ft.
Routing: All Lines. Insurance: 48c.
Est. 1860. Bank Reference: First National Bank.

Grand Rapids:

Kent Storage Company,
59 Front Avenue. Tel. 4285.

Cap. $300,000. Floor Space: 152,000 sq. ft.
Routing: All Lines. Insurance: 47c.
Est. 1904. Bank Reference: Kent State Bank.

Minnesota

Minneapolis:

Security Warehouse Company,
334 North First Street. Tel. Atlantic: 7121.
Inv. $750,000. Floor Space: 688,000 sq. ft.
Routing: All Lines. C. & N. W. Del. Insurance: 17c.
Est. 1883. Bank Reference: First National Bank.
(See St. Paul.)

St. Paul:

Security Warehouse Company,
404 Rosabel Street. Tel. Nestor: 1271.
Inv. $750,000. Floor Space: 688,000 sq. ft.
Routing: All Lines. C. & N. W. Del. Insurance: 17c.
Est. 1883. Bank Reference: First National Bank.
(See Minneapolis.)

Missouri

Kansas City:

Adams Transfer & Storage Company,
228 West 4th Street. Tel. Main: 0228.
Inv. $250,000. Floor Space: 100,000 sq. ft.
Routing: All Lines. Insurance: 24c.
Est. 1899. Bank Reference: Commerce Trust Company.

St. Louis:

The McPheeters' Warehouse Company,
1104 North Levee. Tel. Main: 5475.
Inv. $150,000. Floor Space: 79,200 sq. ft.
Routing: All Lines via Wiggins Ferry. Insurance: 23c.
Est. 1881. Bank Reference: First National Bank.

Nebraska

Omaha:

Bekins Omaha Van & Storage Company,
16th & Leavenworth Streets. Tel. Jackson: 4163.

Cap. $350,000. Floor Space: 241,560 sq. ft.
Routing: All Lines. Insurance: 14c.
Est. 1892. Bank Reference: First National Bank.

[fol. 779] New York

Albany:

Albany Terminal & Security Warehouse Co., Inc.,
1 Dean Street. Tel. Main: 8160.
Cap. $540,000. Floor Space: 500,000 sq. ft.
Routing: N. Y. Central & D. & H. Insurance: 30c.
Est. 1894. Bank Reference: First Trust Company.

Buffalo:

Buffalo Storage & Carting Company,
350 Seneca Street. Tel. Seneca: 3108.
Inv. $250,000. Floor Space: 117,000 sq. ft.
Routing: N. Y. Central. Insurance: $1.00.
Est. 1884. Bank Reference: Marine Trust Company.

Elmira:

A. C. Rice Storage Corporation,
607 Railroad Avenue. Tel. 4115.
Inv. $30,000. Floor Space: 30,000 sq. ft.
Routing: All Lines. Insurance: 50c.
Est. 1923. Bank Reference: Merchants National Bank.

New York:

The F. C. Linde Company,
Beach & Varick Streets. Tel. Walker: 8850.
Cap. $300,000. Floor Space: 360,000 sq. ft.
Routing: New York Central. Insurance: 19.1c.
Est. 1864. Bank Reference: National Park Bank.

Rochester:

Blanchard Storage Company, Inc.,
Broad Street at Oak. Tel. Main: 7021.
Inv. $500,000. Floor Space: 90,000 sq. ft.
Routing: All Lines. Insurance 30c.
Est. 1912. Bank Reference: National Bank of Rochester.

Syracuse:

Great Northern Warehouses, Inc.,
348 West Fayette Street. Tel. 2-1377.
Cap. $1,000,000. Floor Space: 125,000 sq. ft.
Routing: All Lines. Insurance: 15c.
Est. 1919. Bank Reference: City Bank Trust Company.

Utica:

Seneca Warehouse Company, Inc.,
106 Whitesboro Street. Tel. 4-7013.
Inv. $350,000. Floor Space: 125,000 sq. ft.
Routing: All Lines. Insurance: 25c.
Est. 1911. Bank reference: Oneida National.

North Carolina

Asheville:

Allport Storage Warehouse Company,
44 Valley Street. Tel. 114.
Inv. $350,000. Floor Space: 36,000 sq. ft.
Routing: Southern Railroad. Insurance: 58c.
Est. 1926. Bank Reference: Central Bank & Trust Company.

Charlotte:

Carolina Transfer & Storage Company,
1130 W. Morehead St. Tel. Hemlock: 608.
Cap. $60,000. Floor Space: 80,000 sq. ft.
Routing: All Lines. Insurance: 59c.
Est. 1919. Bank Reference: Charlotte National Bank.

Raleigh:

Carolina Storage & Distributing Company,
108 West Lane Street. Tel. 2141.
Cap. $15,000. Floor Space: 15,000 sq. ft.
Routing: All Lines. Insurance: $1.02.
Est. 1918. Bank Reference: Wachovia Bank and Trust Company.

Wilmington:

W. B. Thorpe & Company, Inc.,
Water and Ann Streets. Tel. 789.
Inv. $45,00. Floor Space: 13,000 sq. ft.
Routing: All Lines. Insurance: $1.23.
Est. 1915. Bank Reference: Murchison National.

[fol. 780] North Dakota

Fargo:

Union Transfer Company,
806 Northern Pacific Avenue. Tel. 413.
Inv. $125,000. Floor Space: 126,000 sq. ft.
Routing: All Lines. Insurance: 30c.
Est. 1906. Bank Reference: First National Bank.

Ohio

Cincinnati:

The Wallace Transfer & Forwarding Company,
222 East Front Street. Tel. Main: 45.
Cap. $15,000. Floor Space: 30,000 sq. ft.
Routing: via Penn. Railroad. Insurance: $1.34.
Est. 1906. Bank Reference: Central Trust Company.

Cleveland:

The General Storage Company,
Broadway & East 15th Street. Tel. Prospect: 4854.
Inv. $750,000. Floor Space: 300,000 sq. ft.
Routing: All Lines. Insurance: 57c.
Est. 1897. Bank Reference: The Cleveland Trust Company.

Columbus:

The Merchandise Storage Company,
29 Vine Street. Tel. Main: 3558.
Cap. $50,000. Floor Space: 105,000 sq. ft.
Routing: All Lines. Insurance: 76c.
Est. 1897. Bank Reference: City Trust and Saving Bank.

Dayton:

The Union Storage Company,
101 Bainbridge Street. Tel. Garfield: 1266.
Inv. $325,000. Floor Space: 132,000 sq. ft.
Routing: All Lines. Insurance: 29c.
Est. 1903. Bank Reference: Winters National Bank & Trust Company.

Toledo:

Depenthal Truck & Storage Company,
108 Summit Street. Tel. Adams: 1271.
Cap. $214,000. Floor Space. 44,000 sq. ft.
Routing: B. & O. Railroad. Insurance: 34c.
Est. 1908. Bank Reference: Toledo Trust Company.

Oklahoma

Oklahoma City:

O. K. Transfer & Storage Company,
531 West Main Street. Tel. Walnut: 4600.
Inv. $500,000. Floor Space: 90,000 sq. ft.
Routing: All Lines. Insurance: 25c.
Est. 1900. Bank Reference: Liberty National Bank.

Tulsa:

Tulsa Terminal Storage & Transfer Company,
8 No. Cheyenne St. Tel. 3-4046.
Inv. $350,000. Floor Space: 110,000 sq. ft.
R. R. Routing: All Lines. Insurance: 67c.
Est. 1918. Bank Reference: First National Bank.

Oregon

Portland:

Holman Transfer Company,
8 Front Street. Tel. Broadway: 0157.
Cap. $130,000. Floor Space: 50,000 sq. ft.
Routing: All Lines. Insurance: 65c.
Est. 1864. Bank Reference: Bank of California, N. A.

[fol. 781] Pennsylvania

Harrisburg:

Montgomery & Company,
25 South 10th Street. Tel. Bell: 8249.

Cap. $100,000. Floor Space: 50,000 sq. ft.
Routing: All Lines. Insurance: 92c.
Est. 1874. Bank Reference: Dauphin Deposit Trust Company.

Philadelphia:

Merchants Warehouse Company,
10 Chestnut Street. Tel. Bell-Lombard: 8070.
Cap. $1,000,000. Floor Space: 1,300,000 sq. ft.
Routing: All Lines. Insurance: Base 10c.
Est. 1886. Bank Reference: Fourth St. National Bank.

Scranton:

The Quackenbush Warehouse Company,
225 Vine Street. Tel. 6111.
Cap. $244,000. Floor Space: 197,000 sq. ft.
Routing: All Lines. Insurance: 45c.
Est. 1894. Bank Reference: First National Bank.

South Carolina

Charleston:

Charleston Warehouse & Forwarding Company,
16 Hasell Street. Tel. 790.
Inv. $300,000. Floor Space: 100,000 sq. ft.
Routing: All Lines. Insurance: 34c.
Est. 1914. Bank Reference: Peoples First National Bank.

Columbia:

Columbia Brokerage & Storage Company,
P. O. Box 989. Tel. 3397.
Inv. $300,000. Floor Space: 30,000 sq. ft.
Routing: All Lines. Insurance: $1.04.
Est. 1923. Bank Reference: South Carolina National Bank.

Tennessee

Chattanooga:

Chattanooga Warehouse & Cold Storage Company,
1240 Market Street. Tel. Main: 2741.
Cap. $50,000. Floor Space: $35,000 sq. ft.
Routing: All Lines. Insurance: 33c.
Est. 1912. Bank Reference: First National Bank.

Memphis:

Patterson Transfer Company,
24 North 2nd Street. Tel. 6-0989.
Cap. $250,000. Floor Space 40,000 sq. ft.
Routing: All Lines. Insurance: 17c.
Est. 1856. Bank Reference: Bank of Commerce and Trust Company.

Nashville:

E. M. Bond Storage Company,
1625 Broadway. Tel. 7-0025.
Cap. $150,000. Floor Space: 70,000 sq. ft.
Routing: All Lines. Insurance: 35c.
Est. 1903. Bank Reference: Fourth and First National Bank.

Texas

Dallas:

Dallas Transfer & Terminal Warehouse Company,
Santa Fe Building. Tel. 2-7111.
Cap. $200,000. Floor Space: 270,000 sq. ft.
Routing: All Lines. Insurance: 29c.
Est. 1876. Bank Reference: North Texas National Bank.

El Paso:

El Paso Fireproof Storage Company,
1125 Texas Street. Tel. M.: 2077.
Cap. $30,000. Floor Space: 60,000 sq. ft.
Routing: All Lines. Insurance: 31c.
Est. 1899. Bank Reference: El Paso National Bank.

[fol. 782] Galveston:

The Wiley & Nichols Company,
3501 Avenue E. Tel. 144-4753.
Cap. $40,000. Floor Space: 25,000 sq. ft.
Routing: All Lines. Insurance: 31c.
Est. 1899. Bank Reference: United States National.

Houston:

Texas Warehouse Company,
Baker & Cedar Streets. Tel. Preston: 0745.
Inv. $300,000. Floor Space: 125,000 sq. ft.
Routing: All Lines. Insurance: $1.00.
Est. 1900. Bank Reference: First National Bank.

Wichita Falls:

Tarry-Martin, Inc.,
1507 Lamar Street. Tel. 7517.
Cap. $10,000. Floor Space: 20,000 sq. ft.
Routing: All Lines. Insurance: $1.23½c.
Est. 1919. Bank Reference: Wichita State Bank and Trust Company.

Virginia

Lynchburg:

Lynchburg Storage Company,
1324 Commerce Street. Tel. 681.
Inv. $75,000. Floor Space: 43,000 sq. ft.
Routing: All Lines. Insurance: $1.00.
Est. 1905. Bank Reference: Lynchburg National Bank.

Petersburg:

American Bonded Warehouse, Inc.,
22 S. Market Street. Tel. 54.
Floor Space: 50,000 sq. ft.
Routing: All Lines. Insurance: 47c.
Est. 1919. Bank Reference: National Bank of Petersburg.

Washington

Seattle:

Eyres Storage & Distributing Company,
1st Ave. South & Walker Sts. Tel. Elliot: 0350.
Inv. $650,000. Floor Space: 160,000 sq. ft.
Routing: All Lines. Insurance: 15c.
Est. 1885. Bank Reference: First National Bank.

West Virginia

Huntington:

Maier Sales & Storage Company,
1639-7th Avenue. Tel. 26770.
Cap. $50,000. Floor Space: 44,000 sq. ft.
Routing: C. & O. R. R. Insurance: $1.80.
Est. 1920. Bank Reference: First Huntington National Bank.

Wheeling:

Union Warehouse & Storage Company,
Main, South & 16th Streets. Tel. 708.
Cap. $750,000. Floor Space: 150,000 sq. ft.
Routing: All Lines. Insurance: 18c.
Est. 1920. Bank Reference: Wheeling Bank & Trust Company.

Wisconsin

Milwaukee:

Hansen Storage Company,
120 Jefferson Street. Tel. Broadway: 5770.
Inv. $1,300,000. Floor Space: 500,000 sq. ft.
Routing: C. & N. W. R. R. Insurance: 23c.
Est. 1904. Bank Reference: First Wisconsin National Bank.

Canada

Winnipeg:

Tyson's Storage,
128 James Street. Tel. 21-440.
Inv. $5,000. Floor Space: 20,000 sq. ft.
Routing: All Lines. Insurance: 90c.
Est. 1926. Bank Reference: Canadian Bank of Commerce.

Vancouver:

The Vancouver Warehouse, Ltd.,
550 Beatty Street. Tel. Seymour: 967.
Cap. $100,000. Floor Space: 130,000 sq. ft.
Routing: All Lines. Insurance: 85c.
Est. 1894. Bank Reference: The Canadian Bank of Commerce.

[fol. 783] Officers and Directors

American Chain of Warehouses, Inc.

A. H. Greeley, Chairman, President General Storage Company, Cleveland, Ohio.

Edward Wuichet, President, President Union Storage Company, Dayton, Ohio.

S. M. Haslett, Vice-President, President Haslett Warehouse Co., San Francisco.

D. H. Van Name, Treasurer, Pres.-Treas. The F. C. Linde Co., New York, N. Y.

W. W. Morse, President Security Warehouse Co., Minneapolis, Minn.

John L. Newbold, President Merchants Transfer and Storage Co., Washington, D. C.

Joseph R. Behrens, Secy.-Treas. United Warehouse Co., New Orleans, La.

S. V. P. Quackenbush, Vice-Pres. Quackenbush Warehouse Co., Scranton, Pa.

O. V. Hukill, Eastern Representative, 260 West Broadway, Phone Walker 7195, New York City.

W. H. Eddy, Western Representative, 53 West Jackson Boulevard, Room 1010, Phone Harrison 1496, Chicago, Illinois.

[fol. 784] Complainant's Exhibit No. 5

I. C. C. Dockets 20968, etc.

List of Prominent Business Concerns That Use Merchandise Warehouse Distribution Service and are Afforded That Service by the Merchants Warehouse Company at Philadelphia, Pa.

Name of concern	Point of Shipment	Commodity
Morton Salt Company	Port Huron, Mich.	Salt.
Worcester Salt Company	Silver Springs N. Y. and Ecorse, Mich.	Salt.
Vacuum Oil Company	Bayonne, N. J.	Oils.
Williamsport Wire Rope Co.	Williamsport, Pa.	Wire.
Rossville Company	Shelbyville, Ind.	Alcohol.
Sterling Products Co.	Cambridge, Mass.	Soap.
Fort Pitt Bedding Co.	Pittsburgh, Penna.	Mattresses.
Cudahy Packing Company	Chicago, Ill.	Soap.
O'Sullivan Rubber Co.	New York, N. Y.	Rubber Products.
John B. Astell & Co.	Reading, Pa., Pittsburgh, Pa. & Allenport, Pa.	Boiler Tubes.

Name of concern	Point of shipment	Commodity
Climalene Company	Canton, Ohio	Cleansers.
Campbell Soup Company	Camden, N. J	Canned Soups.
Certain-Teed Products Co	Philadelphia, Pa	Floor Coverings.
Richardson & Boynton Co	Dover, N. J	Heaters.
L. H. Parke Company	Import thru New York	Coffees.
The Daily News Company	E. Millinocket, Me	Newsprint.
Eppens-Smith & Company	Santos, Brazil	Coffees.
H. G. Hanline Company	Cleveland, Ohio, and Newburgh, N. Y	Steel Strapping.
Fairbanks Morse Company	Chicago, Ill	Scales.
Perfection Stove Company	Cleveland, Ohio	Oil Stoves.
Hygienic Products Co	New York, N. Y	"Sani-Flush."
[fol. 785] J. B. Ford Company	Wyandotte, Mich	Soda Ash.
Bon Ami Company	Manchester, Conn	Soap Products.
Sherwin Williams Co	Cleveland, Ohio	Paints.
Quaker Oats Company	Buffalo, N. Y. and St. Louis, Mo	Cereals.

[fol. 786] COM. EX. #6

Harvey C. Miller, President. Samuel Bell, Jr., Vice-President. George M. Richardson, Gen'l Supt. & Treasurer. S. Townsend Zook, Secretary

Merchants' Warehouse Company

General Office: 10 Chestnut St., Philadelphia

Warehouses: Delaware Ave. and Chestnut St., Delaware Ave. and Walnut St., Carpenter and Fifteenth Sts., 1035-1075 N. Delaware Ave., Chestnut and Thirty-first Sts., Front and Berks Sts., Delaware Ave. and Federal St., Front and Bainbridge Sts., Front and Kenilworth Sts., Delaware Ave. and Kenilworth St.

June 16th, 1928.

Chicago Jewelers Tool Works, 10 South Wabash Avenue, Chicago, Ill.

Attention of Wm. S. Reid

GENTLEMEN: Replying to your inquiry of June 14th, which obviously is very much appreciated, we will be very glad indeed to provide accommodations for carload shipments of your machinery packed in crates of the weight and dimensions designated, basis of the following rates:

(a) A storage charge of 40¢ per crate will be assessed to cover each period of 30 days or any fraction thereof.

If you will bill your shipments for delivery to us via the Pennsylvania Railroad, the cars will be placed on our sidings without your incurring any additional expense in the nature of drayage, switching or handling charges.

Under Pennsylvania Railroad tariffs now in effect, carload shipments properly billed for delivery to us are entitled to 48 hours free storage not including day of arrival, Sundays or legal holidays. Therefore any portion of your carload shipments delivered within the free period would be handled by us without expense to you.

Respecting proper notice to your customers, details of this character we feel absolutely sure of our ability to please you and will of course carefully carry into effect any instructions we may receive from you.

Again thanking you for the inquiry and trusting you will be able to favor us with your business, we remain,

Very truly yours, Merchants Warehouse Company,
by George M. Richardson.

GMR-S.

[fol. 787] [Letterhead of Merchants Warehouse Company]

June 20, 1928.

Alcazar Range & Heater Co., Cleveland Ave. First to Fourth Aves., Milwaukee, Wis.

GENTLEMEN: Replying to your esteemed favor of the 16th, asking for storage, handling and cartage rates on your stoves weighing from 200 to 400 lbs. and measuring approximately 55 x 32 x 54 inches, we are pleased to advise as follows:

Assuming that there would be various sizes and styles of stoves to be handled, and that the average size would be the 55 x 32 x 54 size, our storage rate would be $1.00 per stove for each period of 30 days or fraction thereof.

Our labor (handling) rate would be 25¢ per stove. This would include service of unloading car, placing in storage and delivering either to car or tailboard of truck, making out bills of lading and addressing for shipment.

Our warehouse is served by the Pennsylvania Railroad, enabling us to receive carload lots over that road without cartage, and to ship either in carload or L. C. L. lots to any point reached by the Penna. Railroad, without cartage or extra costs to you.

As to cartage rates we need some additional information as to cartage service you would require. As stated above cartage would be unnecessary on shipments over the Penna. Railroad. Shipments over other Railroads and S. S. Lines would have to be carted from warehouse to freight stations. Do you require store-door delivery all over the city? How many stoves would constitute your average delivery? Are stoves delivered to dealers stores or do they have to be placed in residences?

On receipt of the above information we will be pleased to work out a cartage rate for you.

Trusting that the above will be of service to you, and that if you decide to use warehouse service that we may be favored with your business.

Yours very truly, Merchants Warehouse Co., by F. I Godley.

[fol. 788] [Letterhead of Merchants Warehouse Company]

June 22, 1928.

George Steere & Sons, 434 S. Dearborn St., Chicago, Ill.

GENTLEMEN: Replying to your esteemed favor of the 19th, as to storage rates on your Elec. Signs measuring 30" x 6" x 10", weight about 20 lbs., only one size sign to be shipped in a carload, we are pleased to quote you as follows:

Storage, 1½¢ per crate each period of 30 days or fraction thereof.

Labor, 1½¢ per crate (covers unloading car, placing in storage, and delivering either to car or tailboard of truck).

There would be no charge on orders filed with us before the car is unloaded, and hauled by your customers within 48 hours after the arrival of the car. If not hauled within 48 hours the regular storage and labor rates would apply.

Our warehouse is served by the Pennsylvania Railroad, enabling us to receive carload lots without cartage or switching expense and to make either carload or L. C. L. shipments without cartage or handling expense.

We would store your signs in our River Front Stores, which is very centrally located on Delaware Ave. between Chestnut & Walnut Sts., is of steel and concrete construction, and enjoys a very low fire insurance rate. The person-el of this warehouse is very well trained in handling business such as yours and we feel sure that we can give you a service that will please you.

Thanking you for the inquiry and trusting that we may have the pleasure of serving you.

Yours very truly, Merchants Warehouse Co., by F. I. Godley.

[fol. 789] [Letterhead of Merchants Warehouse Company]

May 17, 1928.

Mr. Calvin E. Ahlum, 913 Hamilton St., Allentown, Pa.

DEAR SIR: Replying to yours esteemed favor of the 15th, as to storing and distributing your Corn Sugar in carload lots of about 600 bags each, presuming that the bags weigh approximately 100 lbs., we are pleased to submit to you the following schedule of rates.

Storage—3¢ per bag per month or fraction thereof.

Labor—2¢ per bag.

Cartage, store-door deliveries:

Zone 1—Bounded on North by Diamond St., on the West by Broad St. and on the South by Washington Ave., 12¢ per 100 lbs., minimum charge 50¢.

Zone 2—Bounded on the North by Allegheny Ave., on the West by 35th St. and on the South by Snyder Ave., 18¢ per 100 lbs. Minimum 50¢.

Zone 3—Bounded on North by City Line, on the West by 63rd St. and on the South by the Delaware River, also entire city of Camden, N. J. 25¢ per 100 lbs. Minimum charge 50¢.

Zone 4—Suburban territory covered by enclosed list of towns, 35¢ per 100 lbs. Minimum charge 50¢.

If deliveries are to be made immediately upon receipt of car, our charge would be 1¢ per bag. However we must be advised of such deliveries before the car is unloaded and goods placed in storage, otherwise the full mont- storage and labor charge will be assessed.

Cars should be consigned to yourself % Merchants Warehouse Co., River Front Stores, Phila. Penna. R. R. Dely.

We operate daily ferry cars over the Penna. Railroad and can ship L. C. L. lots to any point served by that Road without cartage or other costs.

Thanking you for your inquiry, and trusting that we may have the pleasure of serving you.

Yours very truly, Merchants Warehouse Co., by F. I. Godley.

[fol. 790] [Letterhead of Merchants' Warehouse Company]

May 4th, 1928.

Kurtz Brothers, Inc., Union Street, First & Second Ave., Bethlehem, Pa.

Attention of Chas. F. Kurtz, President

GENTLEMEN: Replying to your letter of May 1st, will advise, that we will be very glad indeed to provide accommodations for carload shipments of your furniture and render all service incident to the work of unloading cars, warehousing and carrying carefully into effect, your orders covering disposition, basis of the following schedule of charges:

(a) A handling charge of 15¢ per 100# will be assessed to cover work of unloading cars, checking and providing all service incident to making deliveries over our platforms within 48 hours not including day of arrival, Sundays or legal holidays.

(b) A storage charge of 15¢ per 100# will be assessed to cover periods of 30 days or any fraction thereof, following free storage period, designated in Section "A".

(c) A drayage charge of 25¢ per 100# will be assessed to cover service of making store-door delivery to any address in Philadelphia, with the understanding that a minimum of $1.00 per delivery will apply.

The warehouse we would recommend, would be our Federal Stores, a property which is the last word in concrete and steel construction and a fully sprinklered risk, where

we are especially well equipped to render service that we feel sure will please you.

Again thanking you for your inquiry and awaiting what we trust will prove to be a favorable acknowledgment, we remain,

Very truly yours, Merchants' Warehouse Company,
by George M. Richardson.

GMR-C.

[fol. 791] [Letterhead of Merchants' Warehouse Company]

April 30th, 1928.

Bethlehem Wood Products Co., Bethlehem, Pa.

Attention of C. I. Lattig, General Manager

GENTLEMEN: Referring to your letter of April 25th, will advise, that we will be very glad indeed to provide accommodations for carload shipments of your furniture, and render all service incident to the work of unloading cars warehousing and carfully carrying into effect, your orders covering disposition, basis of the following schedule of charges:

(a) A handling charge of 15¢ per 100# will be assessed to cover work of unloading cars, checking and providing all service incident to making deliveries over our platforms within 48 hours not including day of arrival, Sundays or legal holidays.

(b) A storage charge of 15¢ per 100# will be assessed to cover periods of 30 days or any fraction thereof, following free storage period designated in Section A.

(c) A drayage charge of 25¢ per 100# will be assessed to cover service of making store-door delivery to any address in Philadelphia, with the understanding that a minimum of $1.00 per delivery will apply.

The warehouse we would recommend, would be our Federal Stores, a property which is the last word in concrete and steel construction and a fully sprinklered risk, where we are especially well equipped to render service that we feel sure will please you.

Again thanking you for your inquiry and awaiting what we trust will prove to be a favorable acknowledgment, we remain,

Very truly yours, Merchants' Warehouse Company, by George M. Richardson.

GMR-C.

[fol. 792] [Letterhead of Merchants' Warehouse Company]

May 18, 1928.

Hunter Fan & Motor Co., 800 N. Del. Ave., Phila., Pa.

GENTLEMEN: Replying to your esteemed favor of the 16th, as to storage and distribution rates on your Electric Fans, weighing from 10 to 50 lbs., there being fifteen different sizes, we are pleased to quote you as follows:

Storage: 4¢ per case per month or fraction thereof.
Labor: 2¢ " "

The above rates cover services of unloading car, placing in storage deliveries to tail board of truck, making out bills of lading and addressing for shipment.

We have excellent facilities for handling your business, our warehouse is centrally located on Delaware Ave. between Chestnut & Walnut St. and is served by the Pennsylvania Railroad. We operate daily ferry cars over the Penna. Railroad enabling us to make LCL shipments over that Road, without cartage or handling costs to you.

Thanking you for your inquiry and trusting that we may have the pleasure of serving you.

Yours very truly, Merchants Warehouse Co., by F. I. Godley.

[fol. 793]

COMPLAINANTS EXHIBIT No. 7

I. C. C. Docket No. 20968, etc.

Witness: Mr. Fell

Allowances Given by the Pennsylvania Railroad Company to the Merchants Warehouse Company, Inc.

Name or location of warehouse Philadelphia, Pa.:	Class of freight	Rate of allowance
River Front Stores, Webb Warehouse, 15th and Carpenter Sts., Franklin Stores	Flour in barrels, 50,000 barrels or less handled in one month	3½ cents per bbl.
	Flour in barrels over 50,000 barrels handled in one month	2½ cents per bbl.
	Flour other than in barrels and all other merchandise	50 cents per 2000 lbs.
Kensington Stores, 31st and Chestnut, Shackamaxon Stores, Federal Stores	All freight	50 cent per 2000 lbs.
Bainbridge Stores, Kenilworth Stores	Flour in barrels, 50,000 barrels or less handled in one month	3½ cents per bbl.
	Flour in barrels over 50,000 barrels or less in one month	2½ cents per bbl.
	Flour, other than in barrels and all other merchandise	35 cents per 2000 lbs.

Allowances Given by the Pennsylvania Railroad Company to the Quaker City Cold Storage Co., on Inbound Freight

Location of warehouse	Class of freight	Rate of allowance
Delaware Ave. and Spruce St	Butter, Cheese, Eggs and Dressed Poultry	50 cents per 2000 lbs.

Source of information: Penna. R. R. Co. tariff GO-I. C. C. No. 14400.

[fol. 794] EXHIBIT No. 10

Industrial Cold Storage and Warehouse Co., American and Berks St., Philadelphia, Pa.,

Located on Philadelphia & Reading Terminal, connecting with all Refrigerator Lines. Bill all shipments our care, "Philadelphia & Reading Ry. Delivery." No switching charges. Unequaled facilities for the handling of and caring for Poultry, Butter and Eggs. Liberal advances. Rates consistent with the efficiency of "The House of Service."

[fol. 795] COMPLAINANTS' EXHIBIT No. 11

Quaker City Cold Storage Company

Executive Offices: 211 Callowhill Street, Philadelphia, Pa.

Ice Pipe Line Refrigeration. Connections with all Railroads

Warehouses: 211 Callowhill Street, Delaware Ave. & Spruce St., Delaware Ave. & Snyder Ave.

Address reply to Delaware Ave. & Spruce St.

June 13, 1928.

Milk Products Sales Co., Engineers Bldg., Cleveland, Ohio.

Attention Mr. H. E. Case

GENTLEMEN: In reply to yours of the 11th instant referring to storing twenty to thirty cars of condensed milk in Philadelphia, we wish to advise you that we would be very glad to handle this busines for you.

We do not have space available at our Spruce St. warehouse for this commodity, our new building here of approximately two million cubic feet will not be completed until the fall. We can however give you the necessary accommodations at our Delaware & Snyder Avenues' warehouse which is Baltimore & Ohio and Reading delivery.

Our rates for the storing of your condensed milk would be the same as last season. With reference to the cars

which would be distributed immediately on arrival, we will give you forty-eight hours' time for distribution without charge.

Trusting we may be favored with your business, we remain,

Yours very truly, Quaker City Cold Storage Company, John F. Lang, Jr., John F. Lang, Jr., Asst. Treas.

J. F. L./H.

[fol. 796] COMPLAINANTS' EXHIBIT No. 12

I. C. C. Dockets 20968, etc.

Excerpts from "Distribution and Warehousing" Issue of January, 1928

Published by Distribution and Warehousing Publications, Inc., 243-249 West 39th Street, New York, N. Y.

(Page 430:)

Merchants Warehouse Co.* 10 Chestnut St. Pres. & Oper. Exec. Harvey C. Miller, Sec. S. Townsend Zook, Gen. Mgr. & Treas., George M. Richardson, Est. 1886. Inc. Investment $1,000,000. Whses. (all Mdse.): River Front Stores, 600,000 Sq. ft. brick & steel, sprinklered. Bainbridge Stores, 170,000 sq. ft., brick & steel, sprinklered. Shackamaxon Stores 100,000 sq. ft., brick & steel, sprinklered. Federal Stores, 136,000 sq. ft., concrete & steel, sprinklered. Carpenter St. 60,000 sq. ft. 31st & Chestnut Sts., 50,000 sq. ft., brick. Kensington St., 15,000 sq. ft. brick. 2016 Washington Ave., 43,000 sq. ft., brick. Kenilworth Stores, 120,000 sq. ft., brick, sprinklered. Franklin Stores, 31,000 sq. ft., concrete and steel sprinklered. Each warehouse has priv. siding, PRR. Dist. Mdse. & Hhg. pool cars. City & interurban delivery of Mdse. Transfers Hhg. Team service. MbACW. Assoc.: AWAm PSWA (Co. is identified with Philadelphia Tidewater Terminal, which see).

(Page 430:)

Pennsylvania Warehousing & Safe Deposit Co.* 113 So. 3rd St. Pres., George H. Earle, Jr. Sec., E. W. Oescher.

Treas., E. W. Oescher. V. P. & Oper. Exec., Ralph Earle. Est. 1872. Inc. Investment $2,500,000. U. S. C. B. Whses. (Mdse.) 400-404 So. Delaware Ave., 48,800 sq. ft., con-
[fol. 797] crete, sprinklered. (Mdse.) 406-410 So. Delaware Ave., 55,200 sq. ft., slow-burning construction, sprinklered. (Mdse.) 412-418 So. Delaware Ave., 100,000 sq. ft., concrete, sprinklered. (Mdse.) 420-426 So. Delaware Ave., 43,000 sq. ft., slow-burning construction. (Mdse.) 404-412 So. Water St., 92,400 sq. ft., concrete, thermostat sprinklered. (Mdse.) 415-419 So. Front St., 96,000 sq. ft., slow-burning construction, sprinklered. (Mdse.) 778-786 So. Delaware Ave., 77,000 sq. ft., slow-burning construction. (Mdse.) 738-748 So. Delaware Ave., 21,150 sq. ft., slow-burning construction. (Mdse.) 743-753 So. Swanson St., 26,000 sq. ft., slow-burning construction. (Mdse.) Swanson, Clymer & Fitzwater Sts., 18,000 sq. ft., concrete. (Mdse.) Delaware Ave. & Poplar St., 64,000 sq. ft., concrete, sprinklered. (Mdse.) 216-222 No. 23d St., 44,000 sq. ft., slow-burning construction. Harlan Bldg. (Mdse.) rear 216-222 No. 23d St., 7,500 sq. ft., concrete. (Mdse.) 224-228 N. 23d St., 118,000 sq. ft., slow-burning construction, sprinklered. (Mdse.) 16th & Callowhill Sts., 178,000 sq. ft., slow-burning construction, sprinklered. (Mdse.) Richmond & Cambria Sts., 54,000 sq. ft., slow-burning construction, sprinklered. (51,000 sq. ft. leased to tenants.) Dist. Mdse. pool cars. City & interurban delivery of Mdse. Motor truck service. Assoc.: AWAm.

(Page 430:)

Philadelphia Warehousing & Cold Storage Co., Delaware Ave. & Noble St. Pres. & Oper. Exec., J. A. Geisz, Sec. & Treas., W. F. Seese. Est. 1891. Inc. Whses.: (CS.) "A" "B" & "C", totaling 2,230,000 cu. ft.: priv. siding, Reading. Food products. Assoc.: AWAm-cs-PSWA.

[fol. 798] (Page 432:)

Quaker City Cold Storage Co. 211 Callowhill St. Pres., Horace P. Serrill. V. P., James S. Gradwell, Sec. & Treas., Edward T. Davis, Jr. Asst. Treas., L. M. Stackhouse and J. F. Lang, Jr. Est. 1905. Inc. Investment $5,000,000. Whses.: (CS.) 211 Callowhill St., 1,000,000 cu. ft. brick. (CS.) Delaware Ave. & Spruce St., 1,300,000 cu.

ft., brick priv. siding, Penna. RR., connecting with all RRs. through belt line. (CS.) Delaware Ave. & Snyder Ave., 1,400,000 cu. ft., concrete, fireproof, sprinklered; priv. siding, B. & O. & Reading R. R. Terminal. Assoc.: AWAcs & PSWA.

[fol. 799] COMPLAINANTS EXHIBIT No. 3

I. C. C. Dockets 20968, etc.

Complainants Warehouses

Excerpts from "Distribution and Warehousing" Issue of January, 1928

Published by Distribution and Warehousing Publications, Inc., 243-249 West 39th Street, New York, N. Y.

(Page 426:)

Bailey Warehouse Co., Delaware Ave. & South St. Owner, Walter A. Bailey, Est. 1918. Investment $2,000,000. U. S. C. B. P. B. Whse: (Mdse.) above address, concrete & slow-burning, sprinklered; priv. siding, P. R. R.-Reading-B. & O. Consign C. L. shipments to priv. siding, Mdse. pool cars. City & interurban delivery of Mdse. Motor truck service.

(Page 429:)

Gallagher's Warehouses 50 So. 3rd St. Pres., James Gallagher. Sec. & Treas., James Gallagher, Jr. Mgr. & Oper. Exec., Walter J. Merry. Est. 1860. U. S. C. B. Whses: (Mdse.) Almond St. Whse., 708-20 So. Delaware Ave., 75,000 sq. ft., slow-burning; priv. sidings, P. R. R.-Readings. (Mdse.) Swanson Whse., 810-24 So. Swanson St., 65,000 sq. ft., slow-burning; priv. siding, P. R. R. (Mdse.) Water St. Stores, 736-48 So. Swanson St., 50,000 sq. ft., slow-burning; priv. siding, P. R. R. Dist. Mdse. pool cars. City & interurban delivery of Mdse. Motor truck & team service.

(Page 429:)

Industrial Cold Storage & Warehouse Co. 1905 No. American St. Pres., Henry Rosenthal. Sec., C. J. Fritz.

[fol. 800] Treas., Robert Beatty, Jr. Mgr. & Oper. Exec., J. A. Mooney. Est. 1905. Inc. Investment $1,035,000. Whse: (C. S.) 166,650 sq. ft., slow-burning; priv. siding, Reading. Assoc: AWAcs AIR PSWA.

(Page 430:)

Northeastern Warehouse Co.* Sedgley & Erie Aves., Pres., Carl Grubnau. Sec. & Treas., Malpass Grubnau. Supt., Blair R. Miller. Est. 1902. Inc. Investment $400,000. U. S. C. B. Whses: (Mdse.) A, B, C, D, E, above address, totaling 175,000 sq. ft. (5,700 sq. ft. leased to tenants), slow-burning mill construction, sprinklered; priv. sidings, P. R. R.-Reading. Bonded & free stores, also special section for hazardous goods. Consign all shipments to No. Penn. Jct., via P. R. R.-Erie Ave. station, Reading Co. Dist. Mdse. pool cars. City & interurban delivery of Mdse.

(Page 432:)

Rex & Co., Inc.* American & York St. Pres., John B. S. Rex, Sec., Frank E. Klinger. Treas., Philip C. Shaffer, Jr. Est. 1892. Inc. Investment $650,000. U. S. C. B. U. S. I. R. B. Whses: A, P, B, C, D, E, F, G, (Mdse.) totaling 199,690 sq. ft., standard concrete, sprinklered. Each has priv. siding. Consign CL shipments to 2nd & Lehigh Ave. station, P. & R. Dist. Mdse. pool cars. City & interurban delivery of Mdse. Assoc. AWAm PSWA.

(Page 432:)

Terminal Warehouse Co.* Delaware & Fairmont Aves. Pres. Thos. D. Sullivan. V. P. & Oper. Exec. E. V. D. Sullivan. Sec. & Treas., M. B. MacHugh. Est. 1904. Inc. [fol. 801] Investment $500,000. U. S. C. B. U. S. I. R. B. Whses: (Mdse.) above address; 95,000 sq. ft., mill construction; priv. siding P. & R. (Mdse.) Front & Brown Sts., 270,000 sq. ft., reinforced concrete, sprinklered; priv. siding, P. & R. (Mdse.) Delaware Ave. & Spring Garden St., 220,000 sq. ft., slow-burning; priv. siding P. & R. (Mdse.) Front & Race Sts., 165,000 sq. ft., slow-burning. (Mdse.) Delaware Ave. & Poplar St., 125,000 sq. ft., reinforced concrete, sprinklered; priv. siding P. & R. (Mdse. Leased) 31st & Dauphin, 43,000 sq. ft., mill construction. (Mdse.) 12th

& Noble Sts., 65,000 sq. ft., mill construction; priv. siding, Reading. (H. H. G.) 15th & Columbia Ave., 65,000 sq. ft., slow-burning. (Mdse.) Piers 35½ & 36, 115,000 sq. ft., steel frame; priv. siding P. & R. (Mdse.) 16th & Callowhill Sts., 120,000 sq. ft., fireproof. (Mdse.) 25th & Locust Sts., 120,000 sq. ft., fireproof; priv. siding, B. & O. (145,103 sq. ft. leased to tenants.) Consign all shipments to Willow & Noble Sts. Station, Reading-Shackamaxon Station, P. R. R. Dist. Mdse. & Hhg pool cars. City & interurban delivery of Mdse. Transfers Hhg. Motor truck & electric truck service. MbDSInc. Assoc: AWAm NFWA PSWA PFWA.

(Here follow Exhibits Nos. 14, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, side folios 802-813)

12 Warehouses : 34 Acres of Floor Space Sea and Rail

Trackage Facilities for 71 Cars Reading R. R. Penn. R. R.

Merchandise —— Storage —— Distribution

Complete Separate Facilities for Handling Household Goods Shipments

LOCATION—On river front—Heart of jobbing district—Adjacent to navigation lines—Surrounding streets, wide and well paved, eliminate vehicular congestion.

EQUIPMENT—Thoroughly modern—Low insurance—High speed elevators—Ample delivery platforms—Fleet of motor trucks—Completely equipped pool car department.

FACILITIES—Direct track connection with Penn. R. R. and Reading R. R. permitting daily ferry or trap car service—No cartage expense on L. C. L. shipments.

PERSONNEL—Trained to intelligently handle all merchandise.

TERMINAL WAREHOUSE COMPANY

DELAWARE AVE. and FAIRMOUNT

Members—A. W. A. Distribution Service, Inc., N. F. W. A., Pa. F. W. A.

REPRESENTED BY

DISTRIBUTION SERVICE, INC.

The Association of Good Warehouses Limited to Strategic Distribution Centers

WHEN WRITING ADVERTISERS MENTION DISTRIBUTION AND WAREHOUSING

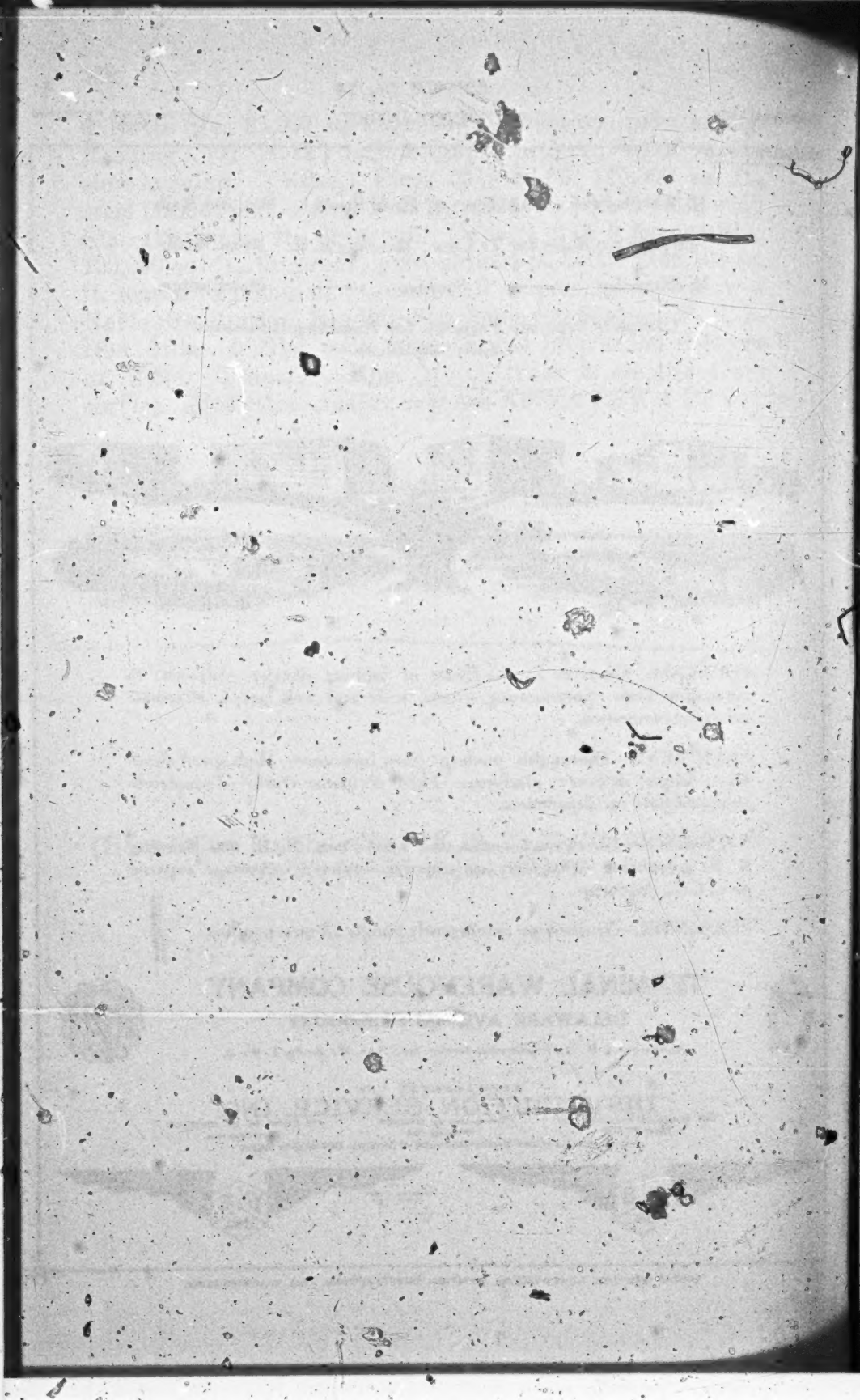


EXHIBIT No. 19

NEW YORK CHICAGO SEATTLE

CARNATION MILK PRODUCTS CO.

MANUFACTURERS OF

CARNATION MILK

71 HUDSON STREET,

NEW YORK

CABLE ADDRESS CARNATION

CODES ABC 5TH EDITION A B C 6TH EDITION WESTERN UNION BENTLEY

IN REPLY PLEASE REFER TO

August 4, 1926.

Mr. E. V. D. Sullivan,
Terminal Warehouse Company,
Philadelphia, Penna.

Dear Sir:

You will probably recall our conversation a year or so ago in connection with allowance to railroad owned or railroad controlled warehouses at Philadelphia, which subject, we understand, was up before the Interstate Commerce Commission for decision.

At that particular time, if the writer remembers correctly, you informed us that you expected a decision to be reached at an early date and it was your opinion that the I. C. C. would abolish this free allowance to these particular warehouses in Philadelphia. Can you furnish us with any information in connection with the decision of the I. C. C. in this case and if there was a decision rendered.

Our Philadelphia representatives bring the question up at this time in connection with pool car arrangements available at Penn State Warehouse and Merchants Warehouse.

We will be glad to hear from you at your convenience in connection with the above.

Yours very truly,

CARNATION MILK PRODUCTS CO.

Asst. Traffic Manager.

PJW P

803

EXHIBIT No. 20

CHICAGO

CARNATION MILK PRODUCTS CO.

MANUFACTURERS OF

CARNATION MILK

71 HUDSON STREET

NEW YORK

August 19, 1926.

In Reply Please Refer To

Mr. E. V. Sullivan,
Terminal Warehouse Company,
Philadelphia, Penna.

Dear Mr. Sullivan:

Wish to thank you for yours of August 12th in connection with terminal allowance situation at Philadelphia.

The writer was in hopes that some decision would be reached before this, but inasmuch as you have the question up with the I. C. C. and feel that definite decision will be made not later than September fifteenth, we will be very glad to grant an extension until the above date. We will appreciate your advising us as promptly as possible after the commission renders its decision.

We sincerely hope that the Commission's decision will be in favor of eliminating the terminal allowance at railroad controlled warehouses in Philadelphia, thereby placing all public warehouses on a parity.w

Yours very truly,

CARNATION MILK PRODUCTS CO.

Asst. Traffic Manager.

PJH P

804

EXHIBIT No. 21

CORN PRODUCTS REFINING COMPANY

WHITEHALL BUILDING
17 BATTERY PLACE

NEW YORK

WAREHOUSE DEPARTMENT

May 16, 1928

Mr. E.V.D. Sullivan, Vice-Pres.,
Terminal Warehouse Company,
Delaware & Fairmount Avenues,
Philadelphia, Pa.

Dear Sir:

We are addressing you to find out if there is any way possible that you might overcome the labor charge at your warehouse, in order that you might be on the same basis with the railroad warehouses.

Of course we know that this situation has prevailed in Philadelphia for a great many years, but so far as we know the non-railroad warehouses have not been able to eliminate the labor charge which would put them on the same basis as their competitors.

In reply, you might advise us as to what you think the possibility of these railroad warehouses ever coming to the same basis as the regular public warehouses.

Yours very truly,

CORN PRODUCTS REFINING COMPANY

MANAGER WAREHOUSE DEPARTMENT

LEP/

EXHIBIT No. 22

SEE ... F THE PERFECT FLOUR

BRANCH OFFICE
Philadelphia National Bank Building
421 Chestnut Street
PHILADELPHIA, PA.

June 15, 1928.

Terminal Warehouse Co.,
Delaware & Fairmount Aves.,
Philadelphia, Pa.

Gentlemen:-

Until such time that you can extend free handling to us on that portion of the car that is delivered within 48 hours of the receipt of car at your warehouse, we will be unable to give you any consideration for Philadelphia distribution.

Yours very truly,

THE NORTHWESTERN CONSOLIDATED MILLING CO.,

DWM/D D. W. M.

EXHIBIT No. 23

WM. WRIGLEY JR. COMPANY

CHEWING GUM MANUFACTURERS

RECEIVED

JAN 27 1928

PHILADELPHIA, PA. January 26th, 1928.

800 NORTH DELAWARE AVENUE

Terminal Warehouse Co.,
Delaware & Fairmount Ave.,
Philadelphia, Pa.

Gentlemen:

Under our agreement with your Company we pay you for the unloading of our cars.

If we were distributing through the Merchants Warehouse this unloading service would be performed free of charge by reason of an arrangement which they have with the Pennsylvania Railroad, whereby the Railroad Company pays the Warehouse Company for this service.

Inasmuch as we receive a considerable number of carloads per annum, the lack of this free service from your Company costs us hundreds of dollars per year.

The purpose of this letter is to inquire whether or not your Company could effect a similar arrangement with the Pennsylvania Railroad and thus eliminate this discrimination, as undoubtedly our competitors are distributing more economically than we are by using the services of the Merchants Warehouse.

Please let us hear from you at your earliest convenience.

Very truly yours,

WM. WRIGLEY JR. COMPANY.

WS:L

Wm. Seatchard

MANAGER.

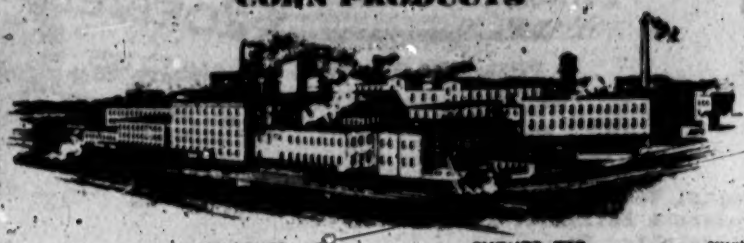
807

EXHIBIT No. 24

THE J. C. HUBINGER BROS. CO.

MANUFACTURERS OF

CORN PRODUCTS



NEW HAVEN
CHICAGO
NEW YORK
BOSTON
PITTSBURG
PHILADELPHIA
BALTIMORE
ST. LOUIS

MILWAUKEE
MINNEAPOLIS
TACOMA
SEATTLE
SALT LAKE CITY
SPOKANE
PORTLAND, OREGON
SAN FRANCISCO

STARCHES

ELASTIC
TIGER GLOSS
RAINBOW
PEARL

POPS CORN
THIN BOILING
CONFECTIONER'S
POWDERED

SYRUPS, ETC.

CORN SUGAR
CORN OIL
GLUTEN FEED

CORN OIL CAKE
DEXTRINE

OMAHA
KANSAS CITY
LOS ANGELES
DES MOINES
DENVER
NEW ORLEANS
DALLAS
SAN ANTONIO

KEOKUK, IOWA.

"THAT'S WHERE THE TALL CORN GROWS"

Oct. 15, 1925.

Terminal Warehouse Co.,
Philadelphia, Pa.

QUOTATIONS SUBJECT TO CHANGE WITHOUT NOTICE. ALL AGREEMENTS AND CONTRACTS ARE EXPRESSLY SUBJECT TO WRITTEN APPROVAL OF THE PRESIDENT OR SECRETARY OF THIS CORPORATION AND CONTINGENT UPON STRIKES, ACCIDENTS, DELAYS OF CARRIERS UNAVOIDABLE OR BEYOND OUR CONTROL.

Gentlemen:

We have your favor of the 8th at hand in which you called our attention to a copy of letter which you forwarded to the New York office and in reply to same, beg to advise that we have arranged to send any future cars going to Philadelphia to another warehouse for the reason that we have been able to secure a better rate for storage and we are promised the same prompt attention by this other warehouse that we have received from you.

Your services which you have rendered toward this company in regard to handling our account, has been very good and as stated above, the only reason that we considered making a change was because of our being able to secure the same kind of service at a cheaper storage rate.

Again thanking you for the courteous treatment that you have rendered us in the past, we remain,

Very truly yours,

THE J.C.HUBINGER BROS. CO.

RJP:B

BY: R. J. Pemberton
(R.J.)

808

EXHIBIT No. 25

A. E. TURNER & COMPANY

135 SOUTH SECOND STREET

PHILADELPHIA

February 10, 1928.

Terminal Warehouse Company,
Delaware Ave. and Brown St.,
Philadelphia, Penna.

ATTENTION: Mr. W. J. McLaughlin.

Dear Mr. McLaughlin:

We have just had to wire our shipper to change the destination on a car of canned goods owing to the fact that you cannot extend to us the forty-eight hours free storage, so that we can make some deliveries.

We would like very much to favor you with at least a portion of our business, if not a great deal of it, but you can appreciate we cannot afford to do so under the circumstances. The shipments that come forward to us are all pool cars, some of the buyers take immediate delivery of their merchandise, others permit it to remain on storage. Those taking delivery naturally will not pay any charges at your warehouse that they do not have to pay at other Terminals in the city.

A few of our up-town buyers have expressed preference for delivery at your warehouse, but this is impossible under the present conditions.

Very truly yours,

A. E. TURNER AND COMPANY.

AET.H

809

EXHIBIT No. 26

THE J. C. HUBINGER BROS. CO.

MANUFACTURERS OF

PURE CORN PRODUCTS

ESTABLISHED 1854

ELASTIC STARCH
POP'S CORN STARCH
TIGER GLOSS STARCH
ALL GRADES MILL STARCH

GENERAL OFFICES AND PLANT
KEOKUK, IOWA.

STANDARD AND FANCY MIXED CORN SYRUP
VALE AND HARVARD BRANDS
UNMIXED CORN SYRUP
CORN GERM MEAL
CORN OIL CORN GLUTEN FEED

Terminal Warehouse Co.,
Philadelphia, Pa.

April 17, 1926.

Gentlemen:

We thank you for your kind favor of the 2nd, and in reply to same wish to state that we are getting very good service from the other warehouses in Philadelphia that are now handling our commodities. Personally, I do not believe that they are giving us any better service than what we formerly received from you people, and as stated in our letter to you some time ago that the only reason that we changed to the other warehouses was that they offered us a better storage rate than what we were paying to your company.

We presume that you have made no deductions in the storage rates that formerly applied to our commodities, and will further say that should you decide to reduce your rates to meet those offered by your competitors we would be only too glad to have you advise us of these rates, as it may be possible that we can again send our commodities to you for storage and distribution.

Yours very truly,

THE J. C. HUBINGER BROS. CO.,

RJP:L

RECEIVED
APR 19 1926

810

EXHIBIT No. 27

DUNLOP
TIRE AND RUBBER COMPANY
BUFFALO, N.Y.

PLEASE ADDRESS REPLY TO
PHILADELPHIA DIVISION
DELAWARE AND FAIRMOUNT AVES.
PHILADELPHIA, PA.

January 24, 1928

Terminal Warehouse Company
Delaware & Fairmount Avenue
Phila., Penna.

Attention: Mr. Sullivan

Gentlemen:

Several years ago we contracted with your Company for space for the storage and distribution of our Tires. Under the terms of this Contract we assumed the cost of unloading cars.

If you will recall we were dickering with the Merchants Warehouse Company prior to consumating our contract with you, and they offered to unload our cars free of charge because they received an unloading allowance from the Penna. Railroad. We selected your facilities because they better suited our needs, but we would like to be freed of this cost.

Inasmuch as the service you perform for us is similar to that promised to us by the Merchants Warehouse, would it not be possible for you to secure this allowance from the Penna. Railroad and thus relieve us of this expense?

Very truly yours,
DUNLOP TIRE & RUBBER CO.

W. B. RUSTON
DIVISION SALES MANAGER

WBR:JR

811

EXHIBIT No. 28

WAREHOUSE DEPARTMENT

CORN PRODUCTS REFINING COMPANY

WHITEHALL BUILDING
17 BATTERY PLACE

NEW YORK

May 21, 1928

Mr. E.V.D. Sullivan, Vice-President,
Terminal Warehouse Company,
Delaware & Fairmount Avenues,
Philadelphia, Pa.

Dear Sir:

Replying to yours of May 17, we cannot understand why our letter should be a surprise to you, inasmuch as it is common knowledge that the railroad warehouses of Philadelphia will meet practically the same rate of storage and eliminate the labor charge.

We do not believe that any of them would be foolish enough to make a quotation, hiding therein a joker which would prohibit their obtaining the account, much less keeping it.

For several years the writer has watched this controversy between the railroad warehouses and the non-railroad warehouses, and certainly is interested in the outcome of ICC Docket 15293, and will appreciate your advising any advance information that you might happen to obtain.

Yours very truly,

CORN PRODUCTS REFINING COMPANY

MANAGER WAREHOUSE DEPARTMENT

LEP/ews

812

EXHIBIT No. 29

The Bon Ami Company, Inc.

11 Battery Place

New York June 22, 1925.

Terminal Warehouse,
Philadelphia, Penna.

Gentlemen:

For sometime past we have been carrying a small stock at the Merchants Warehouse as well as supplying the trade from your warehouse. We have also been shipping cars consigned to our broker care of the Merchants Warehouse and the contents of these cars have been delivered direct to the jobbers as they called.

In this way we have saved quite some storage and handling, and we feel that we should discontinue carrying two warehouse stocks. This is the reason why we have permitted your stock to run down as low as it has. It is our intention to clean it up as soon as possible and not replenish same.

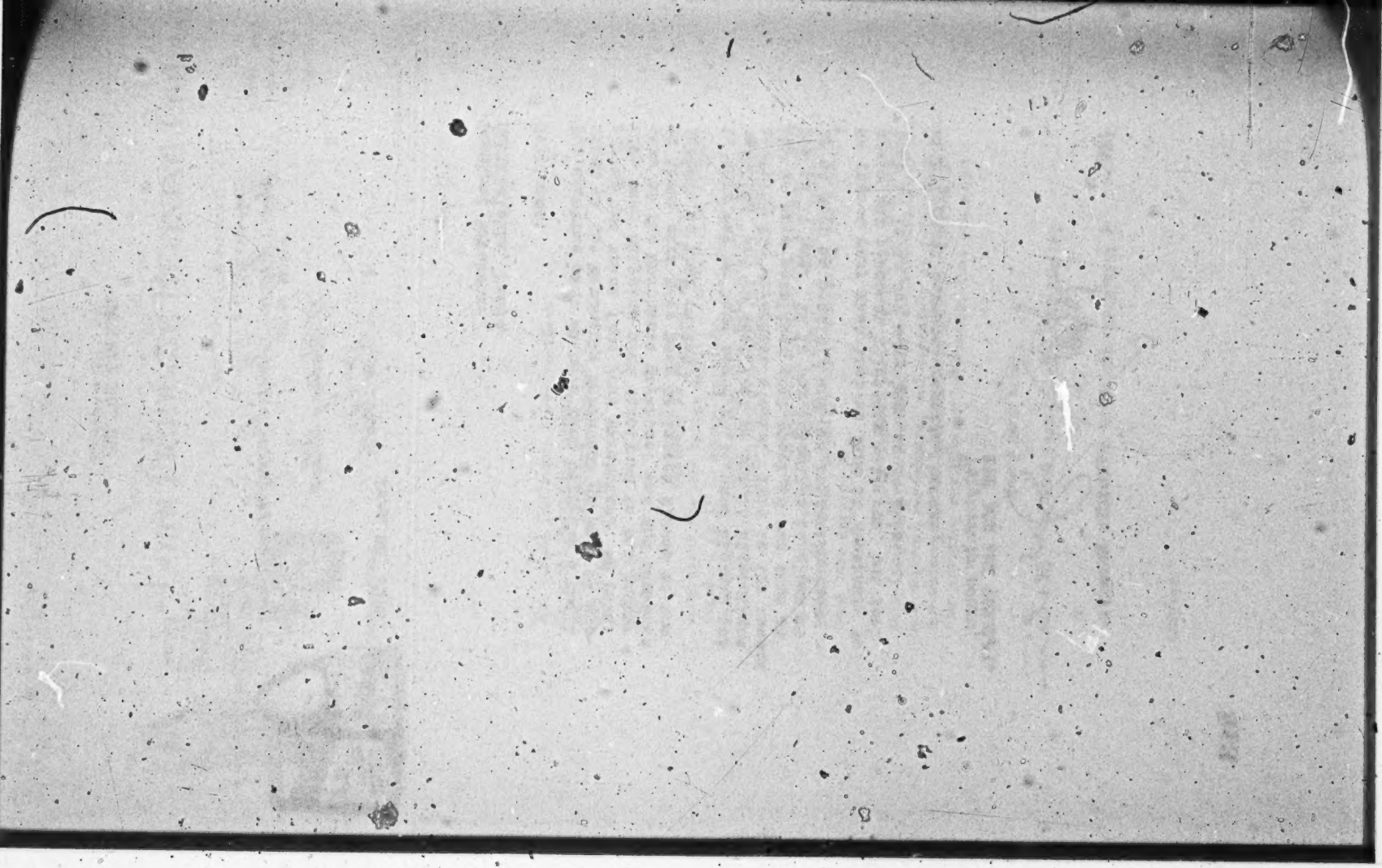
We regret very much that we find it necessary to sever our pleasant relations with you, but feel that it is to our advantage to do this.

With kindest personal regards, we are,

Very truly yours,
THE BON AMI COMPANY.

JAG:x

Traffic Manager.



[fol. 814] EXHIBIT No. 30

List of Prominent Business Concerns That Customarily Use Warehouse Company Service in Marketing and Distributing Their Goods in Philadelphia and Other Large Cities

Name of concern	Point of shipment	Commodity
Morton Salt Company	Port Huron, Mich.	Salt
Worcester Salt Company	Silver Springs, N. Y. and Ecorse, Mich.	Salt
Vacuum Oil Company	Bayonne, N. J.	Oils
Williamsport Wire Rope Co.	Williamsport, Pa.	Wire
Rossville Company	Shelbyville, Ind.	Alcohol
Sterling Products Co.	Cambridge, Mass.	Soap
Fort Pitt Bedding Co.	Pittsburgh, Pa.	Mattresses
Cudahy Packing Co.	Chicago, Ill.	Soap
O'Sullivan Rubber Co.	New York, N. Y.	Rubber Products
John B. Astell & Co.	Reading, Pa., Pittsburgh, Pa., and Allenport, Pa.	Boiler Tubes
Climalene Company	Canton, Ohio	Cleaners
Eagle-Picher Lead Co.	Chicago, Ill.	Paints
Post Products Co.	Battle Creek, Mich.	Cereals
Coca-Cola Company	Atlanta, Ga.	Beverages
Campbell Soup Company	Camden, N. J.	Canned Soups
California Packing Co.	San Francisco, Cal.	Canned Goods
Certain-Teed Products Co.	Philadelphia, Pa.	Floor Coverings
D. & C. Company	Brooklyn, N. Y.	Food Products
Rudd Water Heater Co.	Pittsburgh, Pa.	Heaters
Richardson & Boynton Co.	Dover, N. J.	Heaters
E. H. Parke Company	Import thru Port of New York	Coffees
India Tire & Rubber Co.	Akron, Ohio	Tires
Ajax Rubber Company	Racine, Wis.	Tires
The Daily News Co.	E. Millinocket, Me.	Newsprint Paper

[fol. 815]

The Evening Bulletin	E. Millinocket, Me.	Newsprint Paper
Mountain Valley Water Co.	Hot Springs, Ark.	Mineral Water
James B. Clow & Company	Chicago, Ill.	Radiators
Eppens-Smith & Company	Santos, Brazil	Coffees
H. G. Hanline Company	Cleveland, Ohio and Newburgh, N. Y.	Steel Strapping
Fairbanks Morse Co.	Chicago, Ill.	Scales
American Steel & Wire Co.	Cleveland, Ohio and Newburg, N. Y.	Wire
Rundle Manufacturing Co.	Milwaukee, Wis.	Plumbing Supplies
Ebsary Gypsum Company	Wheatland, N. Y.	Plaster
Handon Boiler Company	Poughkeepsie, N. Y.	Heating Boilers
Perfection Stove Co.	Cleveland, Ohio	Oil Stoves
Hygienic Products Co.	New York, N. Y.	Sani-Flush
J. B. Ford Company	Wyandotte, Mich.	Soda Ash
Bon Ami Company	Manchester, Conn.	Soap Products
Sherwin Williams Co.	Cleveland, Ohio	Paints
The Dif Company	Brooklyn, N. Y.	Soap
Quaker Oats Co.	Buffalo, N. Y. and St. Joseph, Mo.	Cereals
Northwestern Milling Co.	Minneapolis, Minn.	Flour
T. A. Snider Preserve Co.	Chicago, Ill.	Canned Goods
Diamond Crystal Salt Co.	Watson, N. Y.	Salt
Palmolive-Peet Co.	Chicago, Ill. and Kansas City, Mo.	Soap

Name of concern	Point of shipment	Commodity
Van Camp Products Co.....	Louisville, Ky.	Food Products
Pratt Food Company.....	Hammond, Ind. and Buffalo, N. Y.....	Poultry Feed
West Va. Pulp & Paper Co...	Covington, Va.	Paper
Ohio Match Sales Co.....	Wadsworth, Ohio	Matches
Hills Bros. Co.....	New York, N. Y.....	Food Products
[fol. 816]		
Calumet Baking Powder Co...	Chicago, Ill.	Baking Powder
Canada Dry Ginger Ale Co...	New York, N. Y.....	Ginger Ale
Clorax Chemical Co.....	Oakland, Cal	Cleanser
Deft Devices Company.....	Sidney, Ohio	Washing Machines
Pet Milk Sales Co.....	St. Louis, Mo.....	Condensed Milk
Horlick's Malted Milk Co....	Racine, Wis.	Malted Milk
Mapl-Flake Mills, Inc.....	Chicago, Ill.	Cereals
Mason Tire & Rubber Co.....	Mansfield, Ohio	Tires
National Casket Co.....	Boyertown, Pa.	Burial Cases
Seiberling Rubber Co.....	Akron, Ohio	Tires
Tropical Paint & Oil Co.....	Cleveland, Ohio	Paints & Oils
U. S. Graphite Co.....	Saginaw, Mich.	Graphite
Wagner Electric Co.....	St. Louis, Mo.....	Elec. Motors
New York Lubricating Oil Co.	New York, N. Y.....	Oils
J. C. Hubinger Bros. Co.....	Keokuk, Iowa	Starches
S. C. Johnson & Son.....	Racine, Wis.	Waxes
Glucol Manufacturing Co....	Cleveland, Ohio	Glues
Southern Rice Sales Co.....	New Orleans, La.....	Rice
Fontana Food Products Co...	San Francisco, Cal.	Food Products
Mellins Food Company.....	Boston, Mass.	Baby Foods
Southern Cotton Oil Trading Co.	Bayonne, N. J.....	Oils
Stein Hall & Co., Inc.....	Chicago, Ill.	Starches
Arabol Manufacturing Co....	New York, N. Y.....	Glues
Allis-Chalmers Mfg. Co.....	Milwaukee, Wis.	Transformers
The Flintkote Co.....	Boston, Mass.	Asphalt Shingles
Minnesota Mining & Mfg. Co..	St. Paul, Minn.....	Sand Paper
Crico Co., Inc.....	Long Island City, N. Y...	Disinfectants
Aspegren & Company.....	Portsmouth, Va.	Oils
[fol. 817]		
Colgate & Company.....	Jersey City, N. J.....	Soap Products
Procter & Gamble.....	Port Ivory, N. Y. and St. Bernard, Ohio	Soap Products and Cooking Oils
Planters Nut & Chocolate Co..	Suffolk, Va.	Confectionery
Penick & Ford Sales Co.....	Cedar Rapids, Iowa.....	Corn Products
Nestle's Food Company, Inc..	Monomonic, Wis.	Canned Milk
Wm. Wrigley Jr. Co.....	Chicago, Ill.	Chewing Gum
Corn Products Sales Co.....	Argo, Ill. and Edgewater, N. J.	Corn Products
Curtice Bros. Co.....	Rochester, N. Y.....	Canned Goods
E. R. Squibbs & Son.....	Brooklyn, N. Y.....	Drugs
Blanton Company	St. Louis, Mo.....	Oils
Diamond Match Company...	Oswego, N. Y.....	Matches
Lever Brothers Co.....	Cambridge, Mass.	Soap Products
R. T. French Company.....	Rochester, N. Y.....	Spices
Detroit-Michigan Stove Sales Co.	Detroit, Mich.	Stoves
U. S. Industrial Alcohol Sales Co.	Curtis Bay, Md.....	Alcohol

Name of concern	Point of shipment	Commodity
Wildroot Company, Inc.	Buffalo, N. Y.	Hair Tonics
French Battery Company	Madison, Wis.	Batteries
New Jersey Zinc Sales Co.	Palmerton, Pa.	Zinc Oxide
Cracker Jack Company	Chicago, Ill.	Confectionery
The Pennzoil Company	Oil City, Penna.	Oils
Toddy, Inc.	Buffalo, N. Y.	Malted Milk
Golden State Sales Co.	Tulare, Cal.	Powdered Milk
Florence Stove Company	Gardner, Mass.	Oil Stoves

[fol. 818] EXHIBIT No. 31

Pennsylvania Railroad System, Traffic Department

Philadelphia, April 22, 1924.

Association of Manufacturers Representatives, Inc., The Bourse, Philadelphia, Pa.

GENTLEMEN: Your letter of the 10th instant, referring to the handling of grocery products throughPhiladelphia warehouses relates to a matter which, on various occasions, has received our careful consideration, and we are firmly convinced that there is no discrimination in the method followed by our Company whereby we make certain warehouses a part of our station facilities where goods may be delivered to or received from our patrons. I cannot but think that you will realize that it would be inefficient and uneconomical for us to make similar arrangements with every warehouse in the city that desired them.

Even if we were wrong in our belief that there is no discrimination in the present method of conducting our business, it would not follow that other warehouses should be treated as part of our station facilities, since we would be entitled to discontinue the existing arrangements.

While, as I have said, we are firmly convinced that we are correct in this matter, I think it proper to add that a complaint has been presented to the Interstate Commerce Commission by a Baltimore warehouse on account of a situation in that city similar to that which prevails here, and [fol. 819] this case is now under consideration by the Commission. It is the case of McCormick Warehouse Company v. Railroads, Docket No. 15445.

Yours very truly, (Signed) Robt. C. Wright, General Traffic Manager.

[fol. 820] EXHIBIT No. 32

Reading Company

Office of the Vice-President Reading Terminal, Philadelphia

File No. 8-68. April 28th, 1924.

Mr. A. G. Peterson, President Ass'n of Manufacturers' Representatives, Bourse Building, Philadelphia, Pa.

DEAR MR. PETERSON: Your letter of the 10th instant, regarding question of distribution of grocery products through Philadelphia warehouses:

The arrangement to which you refer and applied by our line in connection with traffic handled through the warehouses of the Pennsylvania Warehousing & Safe Deposit Company, has, as you know, been considered very carefully a number of times in the past, and while it is our desire to be entirely fair to the warehouse interests as a whole, we have never felt that the arrangement in question, (which in sum and substance, makes the facilities our facilities), could be extended, with economy, to the other warehouses in Philadelphia.

I assume you are cognizant of the fact that recently the Potomac Warehouse, in Baltimore, presented a complaint to the Interstate Commerce Commission, which has been heard by the latter body and is now in their hands for disposition.

I am confident you appreciate that if we felt any discrimination existed as between the warehouses at Philadelphia we would endeavor to present arrangement applying to the warehouses of the Penn's Warehousing Company, which constitutes a part of our station facilities, does not [fol. 821] establish a discrimination in favor of the particular warehouses in question. Therefore, we do not feel that we can extend the arrangement in question to other warehouses in this city.

Yours very truly, (Signed) E. C. Hilliary, Vice-President.

[fol. 822] COMPLAINANT'S EXHIBIT No. 33

I. C. C. Docket No. 20968

Witness: —— ——.

Rules 14, 23 and 27 of the Consolidated Freight Classification No. 5

Rule 14

Carload ratings or rates apply only when a carload of freight is shipped from one station, in or on one car, [except as provided in Rule 24,] in one day, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be issued for such carload shipment. The minimum carload weight provided is the lowest weight on which the carload rating or rate will apply.

Rule 23

Section 1. Carriers' Agents must not act as Agents of shippers or consignees for the assembling or distribution of carload or less than carload freight.

Section 2. Carriers' Agent at points of shipment must not accept freight to be carried at carload ratings or rates for distribution to two or more parties by Carriers' Agents at points of destination.

Section 3. Agents at points of destination must deliver freight carried at carload ratings or rates to one consignee only, and must not accept orders from shippers or consignees calling for split deliveries according to brands, marks, sizes or other identification of packages.

Section 4. If at the request of the owner of the property or his authorized agent, a carload shipment is delivered to [fol. 823] more than one consignee, less than carload ratings or rates will be applied on the entire shipment, except that the portion delivered to any one consignee will be subject to Rule 15, Section 1.

Rule 27

Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings.

Section 2. Owners are required to load into or on cars heavy or bulky freight for forwarding by rail carriers, and to unload from cars heavy or bulky freight received by rail carriers, carried at less than carload ratings, which cannot be handled by the regular station employes or at stations where the carrier's loading or unloading facilities are not sufficient for handling.

Section 3. Owners must observe carrier's rules regulating the safe loading or freight and protection of equipment. Lading must be securely blocked or braced and when in closed cars must be away from car doors, and weight of lading must be approximately the same on each side of car.

Section 4. When articles are loaded on open cars small detachable parts must be removed and placed in wooden boxes or secured within the article. Boxes must be encircled at ends with iron straps and securely attached to the article or to floor of car. Such boxes must be specified on shipping orders and bills of lading. Fragile parts not detached must be protected.

[fol. 824] COMPLAINANT'S EXHIBIT No. 34

I. C. C. Docket No. 20968

Witness: —— ——

Tariff Provisions in Force at Buffalo, N. Y.

Present Tariff Provision

Item 55b, Sup. 64 to Pennsylvania Railroad Company GO-I. C. C. No. 14370,
Exceptions to Official Classification:

Exception to Rule 27

At Buffalo, N. Y.: When request is received by this Company to load or unload carload package freight, carried at

carload rates, over its platforms, at its freight houses or at Seneca Street Warehouse, Myrtle Avenue Extension of the Keystone Warehouse Company or Union Dock Warehouse, or sheds and platforms thereof a charge of two and one-half (2½) cents per 100 pounds or fifty (50) cents per ton, net or gross, as rated, will be made for such service.

Provisions similar to the present rule in the Pennsylvania Railroad Co. tariff are carried in the following tariffs of other carriers applicable at specified Warehouses in Buffalo:

N. Y. Central R. R. Co., I. C. C. No. 15553; West Shore R. R. Company I. C. C. No. 6112; D. L. & W. R. R. Co., I. C. C. No. 21610; L. V. R. R. Co. No. C-8100 and Erie R. R. Co. I. C. C. No. 17940.

COMPLAINANT'S EXHIBIT No. 35

I. C. C. Docket No. 20968

Witness:

Warehouse Companies Receiving Allowances

Operator of warehouse	Location	Name of warehouse	Railroad service
The Merchants Warehouse Co., Inc.	Delaware Ave. & Chestnut St.	River Front Stores	Penna. R. R. Co.
" " " " "	Delaware Ave. & Walnut St.	Webb Warehouse	Penna. R. R.
" " " " "	Front and Brainbridge Sts.	Bainbridge Stores	Penna. R. R.
" " " " "	Front & Kenilworth Sts.	Kenilworth Stores	Penna. R. R.
" " " " "	Delaware Ave. & Kenilworth Sts.	Franklin Stores	Penna. R. R.
" " " " "	15th and Carpenter Sts.		Penna. R. R.
" " " " "	Front St., Delaware Ave., Washington Ave. & Wharton St.	Federal Stores	Penna. R. R.
" " " " "	31st and Chestnut Sts.		Penna. R. R.
" " " " "	Front and Berks Sts.	Kensington Stores	Penna. R. R.
" " " " "	Beach St. Abv. Laurel St.	Shackamaxon Stores	Penna. R. R.
The Pennsylvania Warehousing & Safe Deposit Co.	Delaware Ave. & Pine St.	Delaware Ave. Stores Nos. 1, 2, 3 & 4.	Reading Co. & B. & O. R. R.
" " " " "	Water St. Bel. Pine	Tobacco Warehouse	No Track Cons.
" " " " "	Delaware Ave. & Catherine St.	West Indies Stores	No Track Cons.
" " " " "	Front, Water & Lombard Sts.	Penna. Stores	No Track Cons.
" " " " "	Delaware Ave. & Catherine St.	Atlantic Stores	No Track Cons.
" " " " "	Delaware Ave. & Fitzwater Sts.	Moro Phillips Stores	Reading Co. & B. & O. R. R.
" " " " "	Delaware Ave. & Poplar St.	Poplar St. Stores	Reading Co.
" " " " "	16th & Callowhill Streets	16th St. Stores	Reading Co.
" " " " "	216-228 North 23rd St.	23rd St. Stores	B. & O. R. R.
" " " " "	Cambria & Richmond Sts.	Port Richmond Stores	Reading Co.
The Philadelphia Warehousing & Cold Storage Co.	Delaware Ave. & Noble St.		Reading Co.
The Quaker City Cold Storage Co., Inc.	Delaware Ave. & Spruce St.		Penna. R. R.

[fol. 826]

COMPLAINANT'S EXHIBIT No. 36

I. C. C. Docket No. 20968

Witness:

Warehouses of Complainants

Operator of warehouses	Location	Name of warehouse	Railroad Service
Terminal Warehouse Co.	Delaware & Fairmont Aves.	Fairmont Stores	Penna. R. R. & Reading Co.
" " "	Delaware Ave. & Spring Garden St.	Spring Garden St. Stores	Penna. R. R. & Reading Co.
" " "	Front and Brown Streets	Brown Street Stores	Penna. R. R. & Reading Co.
" " "	Delaware Ave. & Poplar St.	Terminal Sales Bldg.	Penna. R. R. & Reading Co.
" " "	1211-23 Noble Street	12th Street Stores	Reading Co.
" " "	25th & Locust Streets	25th Street Stores	Baltimore & Ohio R. R.
" " "	Pier 31 North Wharves	Pier 31 North	Penna. R. R. & Reading Co.
" " "	Pier 35½ North Wharves	Pier 35½ North	Penna. R. R. & Reading Co.
" " "	Pier 36 North Wharves	Pier 36 North	Penna. R. R. & Reading Co.
Walter A. Bailey	Delaware Ave. & South St.		Penna. R. R., Reading Co. & B. & O. R. R.
" " "	Delaware Ave. & Tasker St.		Penna. R. R., Reading Co. & B. & O. R. R.
Northeastern Warehouse Co.	Erie and Sedgley Aves.		Penna. R. R. & Reading Co.
Rex & Company, Inc.	E. Side American St. near York		Reading Co.
" " "	W. Side American St. near York		Reading Co.
James Gallagher	708-714 South Delaware Ave.	Almond St. Whse.	Penna. R. R. & Reading Co.
" "	738-746 South Swanson St.	Water St. Whse.	Penna. R. R.
" "	810-820 South Swanson St.	Swanson St. Whse.	Penna. R. R.
Industrial Cold Storage & Warehouse Co.	American St. between Berks and Norris Streets		Reading Co.

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[fol. 827] COMPLAINANT'S EXHIBIT No. 37

I. C. C. Dockets 20968, etc.

Witness: Morgan

Classification of Traffic, Customers, and Rate Payers Who Obtain Warehouse Service at Philadelphia

This exhibit shows a summation of the information in exhibits bearing the numbers 37-A to 37-F, inc.

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouse companies and then distributed in less-than-carload lots by the warehouse companies.

2. Carload freight, transported at carload rates, delivered by the railroads to the warehouse companies and later reshipped in carload lots by the warehouse companies.

3. So called ferry cars of freight, transported at l. c. l. rates, delivered by the railroads to the warehouse companies in l. c. l. lots or reshipped in carloads by the warehouse companies with other goods of like character.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the warehouse companies by railroad, express, parcel post or truck.

2. Carload freight shipped by the warehouse companies from storage.

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the warehouse companies and then card billed by them to the railroad transfer stations.

4. Freight received by the warehouse companies by truck [fol. 828] for assembly into, and shipment in carloads.

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture,

or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the warehouse companies at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the warehouse companies as a substitute therefor.

2. Receivers of l. c. l. quantities of goods transported at carload rates.

3. Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the warehouse companies for certain periods, during which they withdraw the goods in truck loads or in l. c. l. lots at times suiting their business needs.

4. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices in Philadelphia devoted to soliciting, selling and accounting activities.

Those included in Classes 3 and 4 are not equipped with facilities needed for the removal of carloads of goods from the railroad cars, or have no facilities or inadequate facilities for the storage of the goods during the period attending sale or distribution of the goods.

[fol. 829] 5. Manufacturers located in other cities who level their production costs by manufacturing their products in the off seasons, and use the facilities of the warehouse companies in preference to erecting costly warehouse facilities at their plants, and which would be used approximately 25% of the year.

6. Manufacturers located in other cities, who at times store raw materials in transit to their plants, that is, they use warehouse facilities at Philadelphia for such storage in transit.

7. Lessees, under relatively long term leases, of warehouse space afforded by the warehouse companies where the lessees display, store and sell their goods, the handling and distribution service being performed by the warehouse companies.

8. Lessees, under relatively long term leases, of warehouse space afforded by the warehouse companies where the lessees handle, display, store, sell and distribute their own goods.

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the warehouse companies are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The warehouse companies pay the freight charges on some of the inbound carload shipments and collect same with warehouse charges from the consignors.

[fol. 830] 3. The warehouse companies pay the freight charges on some of the inbound carload shipments and collect same with warehouse charges from the local dealer, broker or manufacturer.

4. The warehouse companies pay the freight charges on some of the inbound carload shipments and collect "pro rata", with warehouse charges, from each of the various parties to whom the warehouse companies deliver less-than-carload lots out of the carload shipments.

5. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

6. The warehouse companies sometimes prepay the freight charges on outbound shipments and later collect the amount of those charges from the owner of the goods or his agent.

[fol. 831] Complainants' Exhibit No. 37-A

I. C. C. Dockets 20968, etc.

Witness: Morgan

Terminal Warehouse Company

The several classes of traffic, customers and rate payers involved in the handling of freight, transported by rail-

road, at warehouses operated by The Terminal Warehouse Company at Philadelphia, Pa. are are follows:

Part I

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouse company and then distributed in less-than-carload lots by the Warehouse Company.

2. Carload freight, transported at carload rates, delivered by the Railroads to the Warehouse Company and then reshipped in carloads by the Warehouse Company.

3. So-called ferry cars of freight, transported at l. c. l. rates, delivered by the Railroads to the Warehouse Company and then distributed by the Warehouse Company, with other goods of like character.

The outbound traffic is of the following classes:

1. L. C. L. freight shipped by the Warehouse Company by railroad, express, parcel post or truck.

2. Carload freight shipped by the Warehouse Company from storage.

3. So-called ferry cars made up of numerous l. c. l. shipments loaded by the Warehouse Company and then card billed by it to the railroad transfer stations.

[fol. 832] 4. Freight received by the Warehouse Company by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouse Company at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale

and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the Warehouse Company as a substitute therefor.

Other Customers

The customers of the Warehouse Company (other than the consignors of inbound shipments described above) are of the following classes:

2. Receivers of l. c. l. quantities of goods who may be grouped into the following classes—

(a) Buyers of l. c. l. lots of goods transported at carload rates.

(b) Manufacturers and retail dealers, located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the Warehouse Company for certain periods, during which they withdrew the goods in truck loads or in l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices at Philadelphia [fol. 833] devoted to soliciting, selling and accounting activities.

Those included in classes 2 and 3 are not equipped with facilities needed for the removal of carloads of goods from the railroad cars, and have no facilities, or insufficient facilities, for the storage of the goods during the period attending sale or distribution of the goods.

4. Manufacturers located in other cities who level their production costs by manufacturing their products in the off seasons, and use the facilities of the Warehouse Company in preference to erecting costly warehouse facilities at their plants, and which would only be used approximately 25% of the year.

5. Lessees, under relatively long term leases, of warehouse space afforded by the Warehouse Company where the lessees display, store and sell their own goods, all the han-

dling and distribution service being performed by the Warehouse Company.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the Terminal Warehouse Company are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia prepay the freight charges on such shipments.

2. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the consignors.

[fol. 834] 3. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the local dealer, broker, or manufacturer.

4. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects "pro rata", with warehouse charges, from each of the various parties to whom the Warehouse Company delivers less-than-carload lots out of the carload shipments.

5. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

6. The Warehouse Company sometimes prepays the freight charges on outbound shipments and later collects the amount of those charges from the owner of the goods or his agent.

[fol. 835] Complainants' Exhibit No. 37-B

I. C. C. Dockets 20968, etc.

Witness: Morgan

Gallagher's Warehouses

The several classes of traffic, customers and rate payers involved in the handling of freight, transported by rail-

road, at warehouses operated by Gallagher's Warehouses at Philadelphia, Pa. are as follows:

Part I

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouse company and then distributed in less-than-carload lots by the Warehouses.

2. Carload freight, transported at carload rates, reshipped in carloads by the Warehouses.

3. So called ferry cars of freight, transported at l. c. l. rates, delivered by the railroads to the Warehouses and by the Warehouse in l. c. l. lots or reshipped in carloads by the Warehouses with other goods of like character.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the Warehouses by railroad, express, parcel post or truck.

2. Carload freight shipped by the Warehouses from storage.

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the Warehouses and then card billed by it to railroad transfer stations.

[fol. 836] 4. Freight received by the Warehouses by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouses at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures

or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia, and therefore, they use the warehouse service afforded by the Warehouses as a substitute therefor.

Other Customers

The customers of the Warehouses (other than the consignors of inbound shipments described above) are of the following classes:

2. Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the Warehouses for certain periods, during which they withdraw the goods in truck loads or in l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices at Philadelphia devoted to soliciting, selling and accounting activities.

Those included in Classes 2 and 3 are not equipped [fol. 837] with facilities needed for the removal of carloads of goods from the railroad cars or have no facilities, or inadequate facilities, for the storage of the goods during the period attending sale or distribution of the goods.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at Gallagher's Warehouses are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The Warehouses pay the freight charges on some of the inbound carload shipments and collect same with warehouse charges from the consignors.

3. The Warehouses pay the freight charges on some of the inbound carload shipments and collect same, with warehouse charges, from the local dealer, broker or manufacturer.

4. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

5. The Warehouses sometimes prepay the freight charges on outbound shipments and later collect the amount of these charges from the owner of the goods or his agent.

[fol. 838] COMPLAINANTS' EXHIBIT No. 37-E

I. C. C. Dockets 20968, etc.

Witness: Morgan

Northeastern Warehouse Co.

The several classes of traffic, customers and rate payers involved in the handling of freight, transported by railroad, at warehouses operated by the Northeastern Warehouse Company at Philadelphia, Pa. are as follows:

Part I

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouse company and then distributed in less-than-carload lots by the Warehouse Company.

2. Carload freight, transported at carload rates, delivered by the railroads to the Warehouse Company and later reshipped in carloads by the Warehouse Company.

3. So called ferry cars of freight, transported at l. c. l. rates, delivered by the railroads to the Warehouse Company and distributed by the Warehouse in l. c. l. lots or reshipped in carloads by the Warehouse Company with other goods of like character.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the Warehouse Company by railroad, express, parcel post or truck.

2. Carload freight shipped by the Warehouse Company from storage.

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the Warehouse Company and then card [fol. 839] billed by it to railroad transfer stations.

4. Freight received by the Warehouse Company by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouse Company at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the Warehouse Company as a substitute therefor.

Other Customers

The customers of the Warehouse Company (other than the consignors of inbound shipments described above) are of the following classes:

2. Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the Warehouse Company for certain periods, during which they withdraw the goods in truck loads or in l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices at Philadelphia devoted to soliciting, selling and accounting activities.

[fol. 840] Those included in Classes 2 and 3 are not equipped with facilities needed for the removal of car-

loads of goods from the railroad cars or have no facilities, or insufficient facilities, for the storage of the goods during the period attending sale or distribution of the goods.

4. Manufacturers located in other cities, who at times store raw materials in transit to their plants, that is, they use warehouse facilities at Philadelphia for such storage in transit.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the Northeastern Warehouse Company are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the consignors.

3. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the local dealer, broker or manufacturer.

4. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

5. The Warehouse Company sometimes prepays the freight charges on outbound shipments and later collects the amount of those charges from the owner of the goods, or his agent.

[fol. 841] Complainants' Exhibit No. 37-D

I. C. C. Dockets 20968, etc.

Witness: Morgan

Rex and Company, Inc.

The several classes of traffic, customers and rate payers involved in the handling of freight, transpor ed by rail-

road, at warehouses operated by Rex and Company, Inc., at Philadelphia, Pa. are as follows:

Part I

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouse company and then distributed in less-than-carload lots by the Warehouse Company.

2. Carload freight, transported at carload rates, delivered by the railroads to the Warehouse Company and later reshipped in carloads by the Warehouse Company.

3. So called ferry cars of freight, transported at l. c. l. rates, delivered by the railroads to the Warehouse Company and distributed by the Warehouse Company in l. c. l. lots or reshipped in carloads by the Warehouse Company with other goods of like character.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the Warehouse Company by railroad, express, parcel post or truck.

2. Carload freight shipped by the Warehouse Company from storage.

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the Warehouse Company and then card billed by it to railroad transfer stations.

[fol. 842] 4. Freight received by the Warehouse Company by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouse

Company at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the Warehouse Company as a substitute therefor.

Other Customers

The customers of the Warehouse Company (other than the consignors of inbound shipments described above) are of the following classes:

2. Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the Warehouse Company for certain periods, during which they withdraw the goods in truck loads or in l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices at Philadelphia devoted to soliciting, selling and accounting activities.

Those included in Classes 2 and 3 are not equipped with facilities needed for the removal of carloads of goods from [fol. 843] the railroad cars or have no facilities, or insufficient facilities, for the storage of the goods during the period attending sale or distribution of the goods.

4. Manufacturers located in other cities, who at times store raw materials in transit to their plants, that is, they use warehouse facilities at Philadelphia for such storage in transit.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the Northeastern Warehouse Company are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the consignors.

3. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same with warehouse charges from the local dealer, broker or manufacturer.

4. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

5. The Warehouse Company sometimes prepays the freight charges on outbound shipments and later collects the amount of those charges from the owner of the goods, or his agent.

[fol. 844] COMPLAINANTS' EXHIBIT No. 37-E

I. C. C. Dockets 20968, etc.

Witness: Morgan.

Bailey Warehouses

The several classes of traffic, customers and rate payers involved in the handling of freight, transported by railroad, at warehouses operated by Bailey Warehouses at Philadelphia, Pa. are as follows:

Part I

Traffic

1. Carload freight, transported at carload rates, delivered by the railroads to the warehouses and then distributed in less-than-carload lots by the warehouses.

2. Carload freight, transported at carload rates, delivered by the railroads to the warehouses and then reshipped in carloads by the warehouses.

3. So called ferry cars of freight, transported at l. c. l. rates, delivered by the railroads to the warehouses and

then distributed by the warehouses in l. c. l. lots or reshipped in carloads by the warehouses, with other goods of like character.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the warehouses by railroad, express, parcel post or truck.

2. Carload freight shipped by the warehouses from storage.

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the warehouses and then card billed by them to railroad transfer stations.

[fol. 845] 4. Freight received by the Warehouses by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouse at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the Warehouses as a substitute therefor.

Other Customers

The customers of the Warehouses (other than the consignors of inbound shipments described above) are of the following classes:

2. Receivers of l. c. l. quantities of goods who may be grouped into the following classes:

(a) Buyers of l. c. l. lots of goods,

(b) Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in car-

loads and store same with the Warehouses for certain periods, during which they withdraw the goods in truck loads or in l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia who have offices at Philadelphia devoted to soliciting, selling and accounting activities.

Those included in Classes 2 and 3 are not equipped with [fol. 846] facilities needed for the removal of carloads of goods from the railroad cars, and have no facilities, or insufficient facilities, for the storage of the goods during the period attending sale or distribution of the goods.

4. Lessees, under relatively long term leases, of warehouse space afforded by the Warehouses, where the lessees display, store and sell their own goods, the handling and distribution service being performed by the Warehouses.

5. Lessees, under relatively long term leases, of warehouse space afforded by the Warehouses, where the lessees handle, display, store, sell and distribute their own goods.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the Bailey Warehouses are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The Warehouses pay the freight charges on some of the inbound carload shipments and collect same with warehouse charges from the local dealer, broker or manufacturer.

3. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

4. The Warehouses sometimes prepay the freight charges on outbound shipments and later collect the amount of those charges from the owner of the goods or his agent.

[fol. 847] COMPLAINANTS' EXHIBIT No. 37-F

I. C. C. Dockets 20968, etc.

Witness: Morgan

Industrial Cold Storage and Warehouse Company

The several classes of traffic, customers and rate payers involved in the handling of freight, transported by railroad, at warehouses operated by the Industrial Cold Storage and Warehouse Company at Philadelphia, Pa. are as follows:

Part I

Traffic

The inbound traffic is of the following classes:

1. Carload freight, transported at carload rates, delivered by the railroads to the Warehouse Company and then distributed in less-than-carload lots by the Warehouse Company.

2. Carload freight, transported at carload rates, reshipped in carloads by the Warehouse Company. (This is exceptional.)

3. So called ferry cars of freight, transported at l. c. l. rates, (consolidated with other shipments) distributed by the Warehouse Company in l. c. l. lots or reshipped in carloads by the Warehouse Company.

The outbound traffic is of the following classes:

1. L. c. l. freight shipped by the Warehouse Company by railroad, express, parcel post or truck.

2. Carload freight shipped by the Warehouse Company from storage. (This is exceptional.)

3. So called ferry cars made up of numerous l. c. l. shipments loaded by the Warehouse Company and then card billed by it to the railroad transfer stations.

[fol. 848] 4. Freight received by the Warehouse Company by truck for assembly into, and shipment in carloads.

Part II

Customers

1. There are a large number of manufacturers, wholesalers, and brokers who operate plants and manufacture, or in other manners assemble, goods at points outside of Philadelphia. They ship their goods to the Warehouse Company at Philadelphia in carloads at carload rates and there use warehouse distribution in accomplishing the sale and distribution of their goods. They do not have land, structures or other property in Philadelphia suitable for, or adapted to, acceptance of delivery of carload shipments by the railroads at Philadelphia and, therefore, they use the warehouse service afforded by the Warehouse Company as a substitute therefor.

2. Manufacturers and retail dealers located in Philadelphia or nearby points, who purchase their goods in carloads and store same with the Warehouse Company for certain periods, during which they withdraw the goods in truck loads or l. c. l. lots at times suiting their business needs.

3. Brokers, commission merchants, sales agents and dealers located in Philadelphia, who have offices in Philadelphia devoted to soliciting, selling and accounting activities.

Those included in Classes 2 and 3 are not equipped with facilities needed for the removal of carloads of goods from the railroad cars, and have no facilities, or inadequate facilities, for the storage of the goods during the period attending sale or distribution of the goods.

4. Various business concerns in Philadelphia, who may have facilities for unloading and storing carloads of mer- [fol. 849] chandise, but who do not have cold storage or suitable refrigeration facilities needed to protect perishable foodstuffs in which they deal.

Part III

Rate Payers

The persons who pay the railroad freight charges on shipments handled at warehouses of the Industrial Cold

Storage and Warehouse Company are of the following classes:

1. Consignors of inbound carload shipments who, at points of origin of the shipments outside of Philadelphia, prepay the freight charges on such shipments.

2. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same, with warehouse charges, from the consignors.

3. The Warehouse Company pays the freight charges on some of the inbound carload shipments and collects same, with warehouse charges, from the local dealer, broker or manufacturer.

4. Local dealers and manufacturers or agents of the consignors sometimes pay the freight charges direct to the railroad company.

5. The Warehouse Company sometimes prepays the freight charges on outbound shipments and later collects the amount of those charges from the owner of the goods or his agent.

[fol. 850] COMPLAINANTS' EXHIBIT No. 38

I. C. C. Docket No. 20968, Sub. 1 and Sub. 2

Witness: —— ——

Excerpts from the testimony of Mr. E. P. Bates, Assistant Freight Traffic Manager, Pennsylvania Railroad Company, on July 9, 1927, in McCormick Warehouse Company v. Pennsylvania Railroad Company, Interstate Commerce Commission Docket No. 15445.

The page numbers as stated here refer to the pages of the transcript of that testimony.

Pages 406, 407, and 408

Q. Now, when the Commission's decision was received, did our company take any affirmative action as a result of that decision with reference to this situation?

A. We did.

Q. What was that, sir, and what was the reason for it?

A. Immediately following the decision of the Commission in January, 1925, we, based on the opinion of the Commission, endeavored to make it clear that the arrangements should be carried out strictly in accordance with the views expressed by the Commission in their opinion.

Q. What particular feature are you now referring to, Mr. Bates?

A. Referring to the feature of the payment of the allowance to the Terminal Warehouse Company for service performed.

Q. Have you the opinion before you?

A. Yes.

Q. Will you please state very briefly what particular passage it was that required action?

A. On page 308:

"If, as the record indicates is the case in some instances, allowances are made to the contract warehouses for unload- [fol. 851] ing shipments of which they are the consignees or for loading shipments of which they are the consignors, such allowances must be published and filed with us and made available to all shippers furnishing a like facility or performing a like service of transportation in connection with their traffic."

Q. That was the passage?

A. That was the passage that we had in mind.

Q. At that time did the tariff restrict the allowance so as to prevent its payment on traffic consigned to or by the Terminal Warehouse Company?

A. It did not.

Q. And was that change which has been referred to in Exhibit 20, for instance, incorporated in the tariff subsequent to the previous hearing?

A. Yes, that was published in tariff GO-I. C. C. 14400, effective February 20, 1926.

Q. And was that insertion in the tariff due to the developments in this case?

A. Yes. Following the decision of the Commission in January, 1925, we had considerable correspondence back and forth regarding the matter, and in view of the fact that the arangements covered several points, like Baltimore, Philadelphia, Washington, etc., we wanted to clear the

tariffs, and it was not until the latter part of 1925 when we got it in shape for tariff publication.

[fol. 852] Q. Did you after this decision was rendered and after the matter was receiving that attention, take steps to see that the injunction of the Commission was observed in this respect?

A. We wrote letters and instructions calling attention to the matter with the idea of seeing that the finding of the Commission governed in the use of the tariff in question.

Page 414

Q. Have you prepared copies of these letters that were written after the Commission's decision with a view to seeing that what we did was, as we understand it, in conformity with the Commission's injunction in that passage that you read?

A. Yes, sir.

Q. Will you kindly produce those copies?

A. Yes.

Mr. Bikle: Mr. Hickey will doubtless wish to look over these, but I would like to offer these letters which are attached together, as simply one exhibit. They comprise, I think, eight or nine letters.

I may say for Mr. Hickey's information that our purpose in offering them is not to prove any facts that may be therein referred to or any interpretation of the situation that may be referred to, but to bring to the attention of the Commission that we made honest efforts to try to see that what we did was in conformity with the Commission's conclusions.

Mr. Hickey: With that understanding I will make no objection. Of course it would take me an hour to read [fol. 853] these letters, and I won't ask you to take that time now.

Mr. Bikle: That is our purpose.

Examiner Jewell: They will be received as one exhibit.

(The papers referred to were received in evidence, marked "Defendants' Exhibit No. 22, witness Bates", and the same is forwarded herewith.)

NOTE.—Each of the letters is identified at pages 415 and 416 of the transcript.

[fol. 854] EXHIBIT No. 38-A

Copy

Philadelphia, Pa., Dec. 12, 1925.

Desk "S", File R. F. 812-3.
Allowances to Warehouse Companies.

Mr. T. W. Preston, Division Freight Agent, Baltimore, Md.

DEAR SIR: Inclosed herewith is copy of memorandum of meeting held in office of Attorney General Bikle, December 2nd, in connection with the question of allowances to Warehouse Companies, etc.

You will observe that in view of the decision of the Interstate Commerce Commission in the McCormick Warehouse Company Case No. 15445, it is necessary for us to correct our allowance tariff No. G. O. I. C. C. 14358 to provide that no allowances will be made on traffic consigned to or by this storage or terminal warehouse companies.

We have had up this question with the Philadelphia warehouse people who have expressed themselves as agreeable to the proposed change. Shall be glad if you will arrange to interview the Terminal Warehouse Co. of Baltimore, Md., and the Terminal Refrigerating and Warehousing Co., of Washington, D. C., and explain to them that this action is not any attempt to change our relationship with them, or to curtail their revenue, but it is necessary to comply with the decision of the Commission in the afore-mentioned case, in which the Commission held that no allowance could be paid to the warehouse company where it was either shipper or consignee, unless similar allowances were paid to ship-

[fol. 855] pers or consignees performing like services, and unless the action suggested above is taken we will be subject to demands for allowances to individual shippers and consignees for loading or unloading.

This action of course will be uniform to all warehouses to which allowances are now made.

Please favor me promptly with a report of your interviews.

Very truly yours, A. J. Ball (B.), General Freight Agent.

FHB-jm.

[fol. 856] EXHIBIT No. 38-B

Copy

February 24, 1925.

I. C. C. Docket No. 15445—McCormick Warehouse Co. vs. Railroads.

Mr. E. S. Neilson, Division Freight Agent, Baltimore, Md.

DEAR SIR: I duly received your letter of February 17th, file 41-F-6, Desk A, relative to the above proceeding.

Based on the inquiry contained in your letter, I took this matter up further with General Attorney Bikle, and for your information enclose copy of his reply, in duplicate, one copy of which you may desire to hand to Mr. Lippincott.

You will note Mr. Bikle is clearly of the opinion that "the fact that the Terminal Warehouse Company is not the owner of these shipments does not affect the question", and that if we wish "to protect our interests, it is essential that the Terminal Warehouse Company should discontinue acting as the consignor or the consignee of shipments."

It would, therefore, seem necessary that the question be taken up further with the Terminal Warehouse Company, in order to accomplish the arrangement referred to in my letter to you of the 13th instant.

Yours very truly, J. B. Large, Freight Traffic Manager.

[fol. 857] EXHIBIT No. 38-C

Copy.

February 13, 1925.

I. C. C. Docket No. 15445—McCormick Warehouse Co. vs. Railroads.

Mr. E. S. Neilson, Division Freight Agent, Baltimore, Md.

DEAR SIR: The decision of the Interstate Commerce Commission in the above proceeding contains the following statements:

"If, as the records indicates is the case in some instances, allowances are made to the contract warehouses for unloading shipments of which they are the consignees or for loading shipments of which they are the consignors, such allowances must be published and filed with us and made available to all shippers furnishing a like facility or performing a like service of transportation in connection with their traffic."

As you are well aware, we already provide clearly by tariff publication for the allowances to the Terminal Warehouse Co., so that no action in this respect is necessary upon our part; however, I think it important that you immediately bring this matter to the attention of the Terminal Warehouse Co., so that they may promptly make arrangements to have their patron discontinue the billing of shipments to the warehouse company, and in lieu thereof, have the shipments billed to specific consignees, "care of the warehouse company", taking similar action with regard to outbound shipments, which the warehouse company may handle for account of their patrons.

[fol. 858] For your personal information, I have to advise that the B. & O. R. R. are taking similar action with regard to shipments handled by the B. & O. Warehouses.

Yours very truly, J. B. Large, Freight Traffic Manager.

[fol. 859] COMPLAINANTS' EXHIBIT No. 39

I. C. C. Docket No. 20968

Witness: Oberg

Rates on Various Commodities to Philadelphia, Pa., Pennsylvania Railroad Delivery

Commodities	From	Rates in cents per 100 pounds L. C. L.	Rates in cents per 100 pounds C. L.	C. L. Min. wt.	Tariff reference
Automobile Tires, Rubber	Akron, Ohio	99	65	20,000	A
Canned Fruit, in tin	San Francisco, Cal.	398	105	60,000	B
" " in glass.		480	105	60,000	B
Grain Products (Postum Cereals)	Battle Creek, Mich.	58½	34½	40,000	C
Coca Cola, in glass or in bulk in barrels	Atlanta, Ga	122	81	30,000	D
Dry Batteries, Electric.	Madison, Wis.	130½	68½	30,000	E
Flour, in barrels or cloth bags	Minneapolis, Minn.	95½	41½	40,000	G
Ginger Ale, in glass or in bulk in barrels	New York, N.Y.	28½	19½	30,000	F
Mineral Water, in bottles packed in boxes or bbls.	Hot Springs, Ark.	199	99	30,000	H
Oil Stoves	Cleveland, Ohio	65	38	24,000	A
Paint, in bulk in barrels	" "	45	38	36,000	A
" in tin, in boxes or barrels	" "	65	38	36,000	A
Transformers, Electric.	Milwaukee, Wisc.	140	54½	30,000	E

Explanation of Tariff References:

A—Penns. R. R., I. C. C., F-1970.
B—Agent H. G. Toll, I. C. C., 1190.
C—Agent B. T. Jones, I. C. C., 1976, 2046.
D—Agent J. H. Glenn, I. C. C., A-602.
E—Agent B. T. Jones, I. C. C., 1976.
F—Penns. R. R., GO-I. C. C., 14065.
G—C. M. & St. P., I. C. C., B-4862, Agent B. T. Jones, I. C. C., 1976 and 2046.
H—Agent Johanson, I. C. C., 2008.

(Here follow Exhibits Nos. 42, 43, 44, 45, 46, and 47, side folios 860-868)

EXHIBIT No. 42

RALPH EARLE

M. J. GOEHL
W. T. JUSTICE
H. B. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER . . . $1,000,000

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

Chicago Jewelers Tool Works,
10 South Wabash Avenue,
Chicago, Ill.

PHILADELPHIA
June 16, 1928.

Gentlemen:

Replying to your inquiry of the 14th instant, we beg to submit our storage rates on Machines measuring 48x24x24" weighing approximately 300 pounds each, as follows:

50¢ per crate the first month and 35¢ per crate each month thereafter or fractional part thereof.

We propose to store your Machines in our 23rd Street Stores, 224-228 No. 23rd Street, which is directly served by the Baltimore & Ohio Railroad Company, therefore, your carload shipments should be consigned to us as follows:

In care of - Pennsylvania Warehousing and
Safe Deposit Company,
23rd Street Stores,
Baltimore & Ohio Delivery,
Philadelphia.

On carload shipments arriving in the warehouse as above mentioned we allow you two days free storage not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of crates removed from the warehouse within the prescribed two days free storage time, and our storage charge as mentioned above would only apply for the number of crates remaining in the warehouse after the expiration of the free storage period.

We can make out of town shipments in any quantity from this warehouse via either the Baltimore & Ohio Railroad or Reading Company, thus eliminating the outgoing cartage expense, and all that we require with your shipping orders is bills of lading in triplicate, we will mark or stencil the crates at our expense.

Counties, 27 Acres of Floor Space

TRACK CONNECTION

Pennsylvania Tobacco Store, Bonded—Front, Water and Pine Streets, Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Stores—Sixteenth and Caldwell Streets, Reading Company delivery.

Port Richmond Stores—Richmond and Cumberland Streets, Reading Company delivery.

Pennsylvania Stores, Bonded and Free—Front, Lombard and Water Streets, Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Stores, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets, Reading Company and Baltimore & Ohio Railroad.

Miss Phillips Stores—Delaware Avenue, Swanson and Fairmount Streets, Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Stores—216-228 North Twenty-third Street, Baltimore & Ohio delivery.

Harbor Building—rear 216-228 North Twenty-third Street, Baltimore & Ohio delivery.

Poplar Street Stores—Delaware Avenue and Poplar Street, Reading Company delivery.

West India Stores, Bonded—Delaware Avenue, Columbia and Swanson Streets.

Atlantic Stores, Bonded—Delaware Avenue, Columbia and Swanson Streets.

Cartage and Transportation Dept. —726-734 S. Swanson Street.

Warehouse for storage of Household Merchandise.

Warehouse is also connected to Delaware River Piers.

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It might interest you to know that we operate a fleet of motor trucks, which are placed at the disposal of our customers, and if we can be of any service to you in this connection we will be pleased to quote you our hauling rates for city deliveries as per Zone Map, which we herewith enclose.

We also enclose a small photograph of our Garage showing some of the transportation equipment of our fleet of motor trucks, which were available at the time the picture was taken.

We notify customers promptly upon arrival of cars, thus enabling them to withdraw their merchandise immediately if desired.

Assuring you that any business entrusted to our care will receive our very best attention, we remain,

Yours very truly,

W E MacGregor

Assistant General Sup't.

WEM/m.
Enclosures.

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EXHIBIT No. 43

PRESIDENT
RALPH EARLE
SECRETARY & TREASURER
EDWARD W. OESCHER
ASST. SECRETARY
S. McELROY

GENERAL SUPERINTENDENT
RALPH EARLE
ASSISTANT GENERAL SUPERINTENDENTS
M. J. GOEHL
W. T. JUSTICE
H. B. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER . . $1,000,000

CABLE ADDRESS WAREHOUSE

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

George Steer & Sons,
434 So. Dearborn Street,
Chicago, Ill.

PHILADELPHIA
June 22, 1928.

Gentlemen:

We are in receipt of your favor of the 19th instant, for which please accept our thanks.

We beg to advise that our storage rates on Electric Signs in crates measuring 30x6x10" weighing approximately 20 pounds each, are as follows:

3¢ per crate the first month and 2¢ per crate each month thereafter or fractional part thereof.

We propose to store your Signs in our 23rd Street Stores, 224-228 No. 23rd Street, which is directly served by the Baltimore & Ohio Railroad Company, therefore, your carload shipments should be consigned to us as follows:

In care of - Pennsylvania Warehousing and
Safe Deposit Company,
23rd Street Stores,
Baltimore & Ohio Delivery,
Philadelphia.

On carload shipments arriving in the Warehouse as above mentioned we allow you two days free storage, not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of crates removed from the warehouse within the prescribed two days free storage time, and our storage charge as mentioned above would only apply for the number of crates remaining in the warehouse after the expiration of the free storage period.

It might interest you to know that we operate a fleet of motor trucks, which are placed at the disposal of our customers, and if we can be of any service to you in this connection we will be pleased to quote you our hauling rates for City deliveries, as per Zone Map, which we herewith enclose.

Capacity, 37 Acres of Floor Space

TRACK CONNECTION

Pennsylvania Tobacco Store, Bonded—Front, Water and Pine Streets. Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Store—Sixteenth and Callowhill Streets. Reading Company delivery.

Port Richmond Store—Richmond and Cambria Streets. Reading Company delivery.

Pennsylvania Stores, Bonded and Free - Front, Lombard and Water Streets. Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Stores, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets. Reading Company and Baltimore & Ohio Railroad.

Moro Phillips Store—Delaware Avenue, Swanson and Fairwater Streets. Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Store—216-228 North Twenty-third Street. Baltimore & Ohio delivery.

Harlan Building rear 218-222 North Twenty-third Street. Baltimore & Ohio delivery.

Poplar Street Store—Delaware Avenue and Poplar Street. Reading Company delivery.

West Indie Stores, Bonded—Delaware Avenue, Cathcart and Swanson Streets.

Atlantic Stores, Bonded—Delaware Avenue, Cathcart and Swanson Streets.

Garage and Transportation Dept. —756-774 S. Swanson Street.

Warehouse for storage of Hazardous Merchandise.

Warehouses in close proximity to Delaware River Piers.

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PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT CO.

George Steer & Sons. 2.

Page No.___.

We also enclose a small photograph of our Garage showing some of the transportation equipment of our fleet of motor trucks, which were available at the time the picture was taken.

If there is any further information desired, please do not hesitate to advise us.

Assuring you that any business entrusted to our care will receive our very best attention, we remain,

Yours very truly,

W E Macgregor

Assistant General Sup't.

WEM/m.
Enclosures.

EXHIBIT No. 44

GEORGE H. EARLE, JR — E. W. DESCHER — M. J. GOEHL
RALPH EAGLE — S. H. McELROY — W. T. JUSTICE, W. S. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER $1,000,000

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

PHILADELPHIA
June 18th
1928

Alcazar Range and Heater Co.,
Cleveland Ave., 1st to 4th Ave.,
Milwaukee, Wisc.

Att'n Mr. C.J. Westwood

Gentlemen:-

We are in receipt of your favor dated June 16th, regarding storage, handling and cartage charges on stoves weighing from 300 pounds to 400 pounds and measuring approximately 55 inches by 32 inches by 54 inches, and beg to advise that our rates are as follows: Storage, fifty cents per crate the first month and forty cents per crate each succeeding month or fractional part thereof.

We would propose storing these stoves in our Twenty-Third Street Stores, which is served directly by the Baltimore and Ohio Railroad, and carloads intended for this warehouse should be consigned as follows: Care of Pennsylvania Warehousing & Safe Deposit Company, 23rd Street Stores, Philadelphia, Pa., Baltimore & Ohio Railroad Delivery.

On Carload shipments arriving in this warehouse routed as above we allow two days free storage, not including the day of arrival, sundays or legal holidays; in other words, there is not storage charges on goods removed during this two days free time, and charge is only made for the part of shipment remaining in the warehouse.

We can make out of town shipments from this warehouse, via the railroads without cost to you, thus eliminating the out-bound cartage charge.

Our rates for trucking as per zone map inclosed is thirty-five cents per crate in zone one, with a minimum of fifty cents. Fifty cents per crate in zone two. Sixty cents per crate in zone three, with a minimum of $1.00 and seventy-five cents in zone four with a minimum of $1.00. As zones # 2, 3 and # 4 also cover points in New Jersey, the ferry charge is in addition to the rates quoted above.

Thanking you for this opportunity to quote our rates and assuring you any business intrusted to us will have our most careful attention, we remain

Very truly yours,

W. T. Justice

Assistant Gen'l Superintendent

WTJ:M
enc.

Capacity, 39 Acres of Floor Space

TRACK CONNECTIONS

Pennsylvania Terminal Stores, Bonded—Front, Water and Pine Streets. Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Stores—Sixteenth and Callowhill Streets. Reading Company delivery.

Port Richmond Stores—Richmond and Cumberland Streets. Reading Company delivery.

Pennsylvania Stores, Bonded and Free—Front, Lombard and Water Streets. Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Stores, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets. Reading Company and Baltimore & Ohio Railroad.

Moore Phillips Stores—Delaware Avenue, Sequoia and Fairwater Streets. Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Stores—216-226 North Twenty-third Street. Baltimore & Ohio delivery.

Poplar Street Stores—Delaware Avenue and Poplar Street. Reading Company delivery.

West India Stores, Bonded—Delaware Avenue, Cohocksink and Sequoia Streets.

Atlantic Stores, Bonded—Delaware Avenue, Cohocksink and Sequoia Streets.

Garage and Transportation Dept.—716-774 S. Sequoia Street.

Warehouses for storage of Household Merchandise.

Warehouses in close proximity to Delaware River Piers.

EXHIBIT No. 45

PRESIDENT
RALPH EARLE
SECRETARY & TREASURER
EDWARD W. OESCHER
GENERAL SUPERINTENDENT
A. McELROY

GENERAL SUPERINTENDENT
RALPH EARLE
ASSISTANT GENERAL SUPERINTENDENTS
M. J. GOEHL
W. T. JUSTICE
H. B. MAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER - - - $1,000,000

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

CABLE ADDRESS "WAREHOUSE"

Boger & Company,
248 Chestnut Street,
Philadelphia, Pa.

PHILADELPHIA

May 31, 1928

Gentlemen:

We beg to confirm storage rates quoted you on bales of Cotton weighing approximately 800 pounds each, as follows:

35¢ per bale the first month and 20¢ per bale each month thereafter or fractional part thereof.

We propose to store the Cotton in either our Moro Phillips or Delaware Avenue Stores, therefore, carload shipments should be consigned to us as follows:

In care of - Pennsylvania Warehousing and
Safe Deposit Company,
Delaware Avenue Stores,
Reading or Baltimore & Ohio
Delivery, Philadelphia.

On carload shipments arriving in the Warehouse as above mentioned we allow you two days free storage, not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of bales removed from the Warehouse within the prescribed two days free storage time, and our storage charge as mentioned above would only apply for the number of bales remaining in the Warehouse after the expiration of the free storage period.

Assuring you that any business entrusted to our care will receive our very best attention, we remain,

Yours very truly,

W E MacGregor

Assistant General Sup't.

WEM/m.

Capacity, 37 Acres of Floor Space

TRACK CONNECTION

Pennsylvania Tobacco Stores, Bonded—Front, Water and Pine Streets. Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Stores—Fairmount and Callowhill Streets, Reading Company delivery.

Port Richmond Stores—Richmond and Cambria Streets. Reading Company delivery.

Pennsylvania Stores, Bonded and Free—Front, Lombard and Water Streets. Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Stores, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets. Reading Company and Baltimore & Ohio Railroad.

Moro Phillips Stores—Delaware Avenue, Swanson and Fairwater Streets. Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Stores—216-228 North Twenty-Third Street. Baltimore & Ohio delivery.

Harlan Building near 216-222 North Twenty-third Street. Baltimore & Ohio delivery.

Poplar Street Stores—Delaware Avenue and Poplar Street. Reading Company delivery.

West India Stores, Bonded—Delaware Avenue, Catherine and Swanson Streets.

Atlantic Stores, Bonded—Delaware Avenue, Catherine and Swanson Streets.

Garage and Transportation Dept.—756-774 S. Swanson Street.

Warehouses for storage of Hazardous Merchandise.

Warehouses in close proximity to Delaware River Piers.

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EXHIBIT No. 46

PRESIDENT
RALPH EARLE
SECRETARY & TREASURER
EDWARD W. OESCHER
ASSISTANT SECRETARY
S. H. McELROY

GENERAL SUPERINTENDENT
RALPH EARLE
ASSISTANT GENERAL SUPERINTENDENT
M. J. GOEHL
W. T. JUSTICE
H. B. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER - - $1,000,000

CABLE ADDRESS "WAREHOUSE"

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

Hunter Fan and Motor Company,
800 North Delaware Avenue,
Philadelphia, Pa.

PHILADELPHIA
May 18, 1928.

Attn:-Mr. Joseph A. Zavorski

Gentlemen:

Replying to your letter of the 16th instant, we beg to submit our storage and hauling rates on Electric Fans, as follows:

Fans weighing 10 to 30 pounds.
3¢ per fan the first month and 2¢ per fan each month thereafter.
Fans weighing 30 to 65 pounds.
5¢ per fan the first month and 4¢ per fan each month thereafter.

Our storage rates are based on monthly periods or fractional part thereof.

Our hauling rates covering the various Zones, as per Zone Map, which we herewith enclose, are as follows:

Zone-1.
5¢ per fan with a minimum charge of $1.00 for each delivery.
Zone-2.
7¢ per fan with a minimum charge of $1.50 for each delivery.
Zone-3.
8¢ per fan with a minimum charge of $2.50 for each delivery.
Zone-4.
10¢ per fan with a minimum charge of $2.50 for each delivery.
Zone-5.
10¢ per fan with a minimum charge of $3.00 for each delivery.

As Zones 2, 3, 4 and 5 also include deliveries to Camden on our Zone Map, the above rates will apply, plus the ferriage charge.

We propose to store your Fans in

Capacity, 37 Acres of Floor Space

TRACK CONNECTION

Pennsylvania Tobacco Store, Bonded—Front, Water and Pine Streets. Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Store—Sixteenth and Callowhill Streets, Reading Company delivery.

Port Richmond Store—Richmond and Cambria Streets. Reading Company delivery.

Pennsylvania Store, Bonded and Free—Front, Lombard and Water Streets. Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Store, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets. Reading Company and Baltimore & Ohio Railroad.

More Phillips Store—Delaware Avenue, Swanson and Fairwater Streets. Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Store—216-220 North Twenty-Third Street. Baltimore & Ohio delivery.

Harlan Building near 216-220 North Twenty-third Street. Baltimore & Ohio delivery.

Poplar Street Store—Delaware Avenue and Poplar Street. Reading Company delivery.

West India Store, Bonded—Delaware Avenue, Catharine and Swanson Streets.

Atlantic Store, Bonded—Delaware Avenue, Catharine and Swanson Streets.

George and Transportation Dept.—756-774 S. Swanson Street.

Warehouses for storage of Hazardous Merchandise.

Warehouses in close proximity to Delaware River Piers.

our Delaware Avenue Stores, therefore, your carload shipments should be consigned to us as follows:

In care of - Pennsylvania Warehousing and
Safe Deposit Company,
Delaware Avenue Stores,
Reading or Baltimore & Ohio
Delivery, Philadelphia.

On carload shipments arriving in the Warehouse as above mentioned we allow you two days free storage, not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of fans removed from the warehouse within the prescribed two days free storage time, and our storage charge as mentioned above would only apply for the number of fans remaining in the warehouse after the expiration of the free storage period.

We can make out of town shipments in any quantity from our Delaware Avenue Stores via either the Reading, Baltimore and Ohio or Pennsylvania Railroads, thus eliminating the outgoing cartage charge. We will mark or stencil the packages at our expense.

We enclose, herewith, a small photograph of our Garage showing some of the transportation equipment of our fleet of motor trucks, which were available at the time the picture was taken.

Trusting that we will be favored with your business, which will receive our very best attention, we remain,

Yours very truly,

W E Macgregor

Assistant General Sup't.

WEM/m.
Enclosures.

EXHIBIT No. 47

PRESIDENT
RALPH EARLE
DIRECTOR & TREASURER
EDWARD W. [illegible]SCHER
CONSTANT SECRETARY
G. M. McELROY

GENERAL SUPERINTENDENT
RALPH EARLE
ASSISTANT GENERAL SUPERINTENDENT
M. J. GOEHL
W. T. JUSTICE
H. B. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 111 AND 113 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER - - $1,000,000

CABLE ADDRESS WAREHOUSE

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

Mr. Robert Harrison,
877 Drexel Building,
Philadelphia, Pa.

PHILADELPHIA

June 4, 1928.

Dear Sir:

We beg to confirm storage rate quoted you recently on 50 and 24 pound cartons of flour, as follows:

50 lb. cartons - 2½¢ per carton per month or fractional part thereof.

24 lb. cartons - 1½¢ per carton per month or fractional part thereof.

These rates are equivalent to 6¢ and 12¢ per barrel.

We propose to store your flour in our Delaware Avenue stores, therefore, your carload shipments should be consigned to us as follows:

In care of - Pennsylvania Warehousing and
Safe Deposit Co.,
Delaware Avenue Stores,
Baltimore and Ohio or
Reading Co. Delivery.

On carload shipments arriving in the Warehouse as above mentioned we allow you two days free storage, not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of cartons removed from the Warehouse within the prescribed two days free storage time, and our storage charge as mentioned above would only apply for the number of cartons remaining in the Warehouse after the expiration of the free storage period.

If there is any further information desired, please do not hesitate to advise us.

Assuring you that any business entrusted to our care will receive our very best attention, we remain,

Yours very truly,

W E Mackregan

Assistant General Sup't.

WEM/m.

Capacity, 37 Acres of Floor Space

TRACK CONNECTION

Pennsylvania Tobacco Store, Bended Front, Water and Pine Streets. Reading Company and Baltimore & Ohio Railroad.

Sixteenth Street Store—Sixteenth and Callowhill Streets, Reading Company delivery.

Port Richmond Store—Richmond and Cambria Streets. Reading Company delivery.

Pennsylvania Store, Bended and Free—Front, Lombard and Water Streets. Reading Company and Baltimore & Ohio Railroad.

Delaware Avenue Stores, Nos. 1, 2, 3 and 4—Delaware Avenue, Pine, Water and Lombard Streets. Reading Company and Baltimore & Ohio Railroad.

Moro Phillips Store—Delaware Avenue, Swanson and Fairwater Streets. Reading Company and Baltimore & Ohio Railroad.

Twenty-third Street Store—216-228 North Twenty-Third Street. Baltimore & Ohio delivery.

Harlan Building near 216-228 North Twenty-third Street. Baltimore & Ohio delivery.

Poplar Street Store—Delaware Avenue and Poplar Street. Reading Company delivery.

West India Store, Bended—Delaware Avenue, Catharine and Swanson Streets.

Atlantic Store, Bended—Delaware Avenue, Catharine and Swanson Streets.

Garage and Transportation Dept.—756-774 S. Swanson Street.

Warehouses for [illegible] Hazardous Merchandise.

Warehouses in close proximity to Delaware River Piers.

868

[fol. 869] COMPLAINANTS' EXHIBIT No. 48

I. C. C. Dockets 20968, etc.

List of Customers of the Pennsylvania Warehousing & Safe Deposit Company

Name of concern	Commodity
Eagle-Picher Lead Co.	Paints
Post Products Company	Cereals
Coca-Cola Company	Beverages
California Packing Company	Canned Goods
The Evening Bulletin	Newsprint
Congress Cigar Company	Tobacco
Bayuk Cigars, Inc	Tobacco
Van Camp Products Co.	Food Products
Pratt Food, Company	Poultry Feed
Deft Devices Company	Washing Machines
Horlick's Malted Milk Co.	Malted Milk
Wagner Electric Company	Elec. Motors
Southern Rice Sales Co.	Rice
Mellins Food Company	Baby Foods
Aspegren & Company	Oils
Penna. Sugar Company	Sugar
General Refractories Co.	Fire Brick
Roessler & Hasslacher Chem. Co.	Chemicals
Wright Appliance Co.	Meadows Washing Machines
[fol. 470] Anheuser-Busch, Inc	Corn Products
Industrial & Scientific Inst. Co.	Glass
Staley Sales Corp.	Starches
Hurley Machine Company	Wash. Machines

(Here follow Exhibits Nos. 50 and 51, side folios 871 and 872)

EXHIBIT No. 50

PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

J. A. GEISZ, PRESIDENT
WM. J. MONTGOMERY, VICE PRESIDENT
W. F. SEEBE, SEC'Y AND TREAS.
J. H. SKILTON, ASST. SEC'Y AND TREAS.

DELAWARE AVENUE, NOBLE, BEACH AND FRONT STREETS

PHILADELPHIA, PA. June 12th, 1928.

The Milk Products Sales Co,
Cleveland,
Ohio.

Gentlemen;-

Replying to your letter of the 11th inst we will be glad to have you use the facilities we have to offer for distribution and storage.

Our storage rate is 65 cents per barrel per month or fraction thereof for a temperature of 33 to 38 degrees.

If the cars are properly consigned in our care via Reading Company, Willow and Noble Streets Station, Philadelphia, we will not make any charge for the delivery if removed within 48 hours after arrival of those cars to be distributed.

Trusting you may find it your advantage to store with us.

Yours truly,

W F Seebe

Secretary.

871

EXHIBIT No. 51

PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

JUN 1928
RECEIVED
N.W.

J. A. GEISZ, PRESIDENT
WM. J. MONTGOMERY, VICE PRESIDENT
W. F. SEEDS, SECY. AND TREAS.
J. H. SKILTON, ASST. SECY. AND TREAS.

DELAWARE AVENUE, NOBLE, BEACH AND FRONT STREETS

PHILADELPHIA, PA.

June 12th, 1928.

Northern Wisconsin Produce Company,
Manitowoc,
Wis.

Gentlemen;-

We beg to acknowledge the receipt of your letter of the 9th inst. Our rates on eggs are 14 cents per case for the first month and 7 cents per case each additional month.

We have the Storage in Transit privilege but to obtain same application must be made with the Freight Traffic Department. Route your cars via New York Central and Reading Company if you want final New York delivery or for New York and New England via Baltimore and Ohio and Reading Company, Willow and Noble Streets Station, Philadelphia. If cars are routed as above there will not be any charge if delivered within 48 hours after arrival.

Our advances are based on 75 percent of the value, delivered here. The rate of insurance is 81 cent per $100.00 per annum shorter periods at regular tabulated rates.

Yours truly,

W F Seeds

Secretary.

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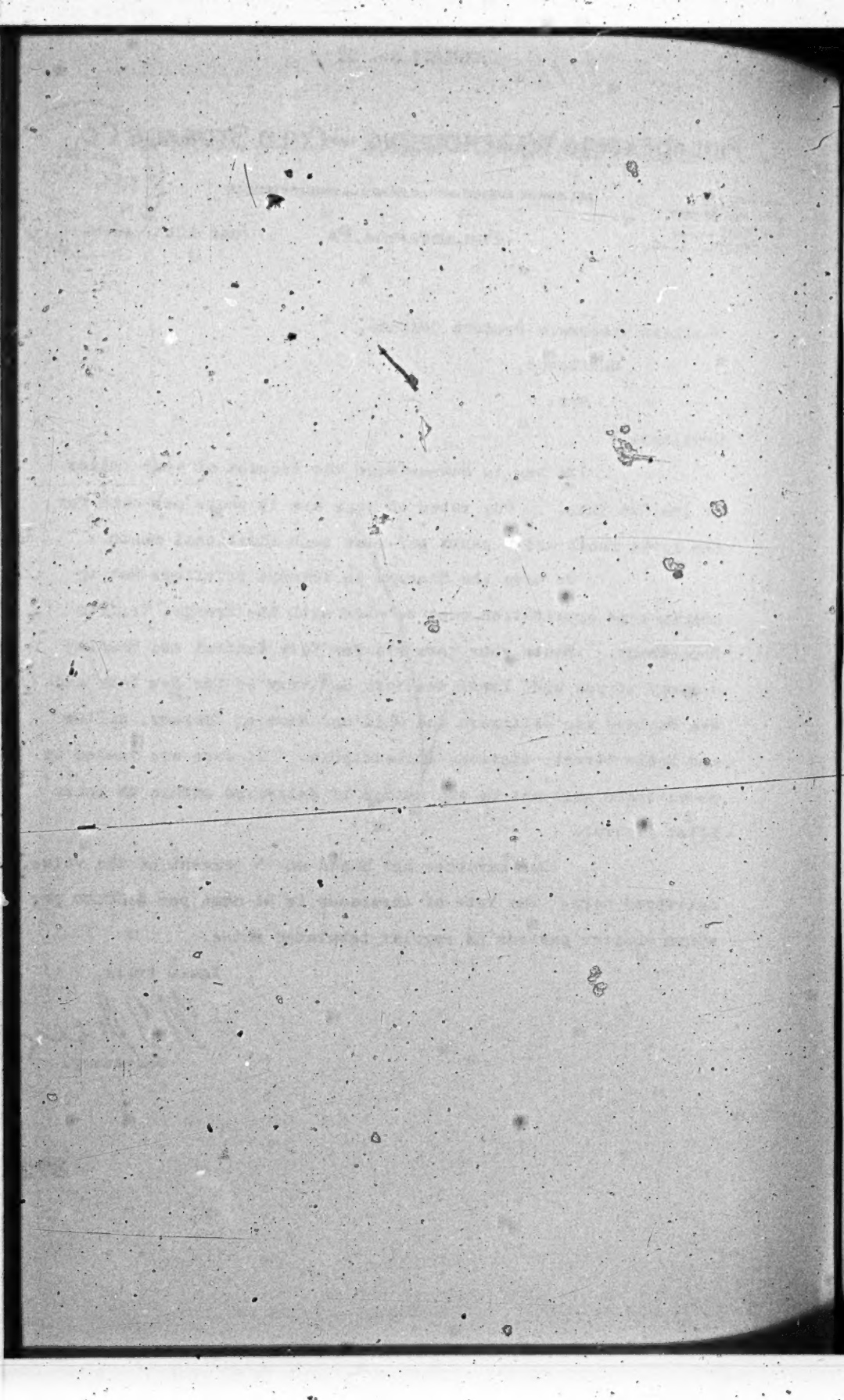

[fol. 873]

EXHIBIT No. 52

Statement of Bills of Pennsylvania Warehousing and Safe Deposit Company

Date of claim	Paid by voucher No.	Date of voucher	Inbound tonnage lbs.	Outbound tonnage lbs.	Total tonnage lbs.	Rate of allowance per ton	Amount paid	Total of voucher	Service at
1927		1927							
Jan. 31	28204	Feb.	1,458,961	.....	.....	$.50	$364.74	.....	23rd St. Stores
"	.....	.....	.....	41,000	.....	"	10.25	.....	"
"	.....	.....	3,396,325	.....	.....	"	848.83	.....	Del. Ave. Stores
"	.....	.....	.....	24,000	4,919,286	"	6.00	$1,229.82	"
Feb. 28	30710	March	1,383,079	.....	.....	"	345.77	.....	23rd St. Stores
"	.....	.....	.....	20,000	.....	"	5.00	.....	"
"	.....	.....	1,633,664	.....	.....	"	408.42	.....	Del. Ave. Stores
"	.....	.....	.....	53,980	3,090,723	"	13.49	772.68	"
March 31	42701	April	1,471,819	.....	.....	"	367.95	.....	23rd St. Stores
"	.....	.....	.....	138,300	.....	"	34.57	.....	"
"	.....	.....	2,344,145	.....	.....	"	586.03	.....	Del. Ave. Stores
"	.....	.....	.....	.....	3,954,264	"	....	988.55	"
April 30	52898	May	1,812,202	.....	.....	"	453.05	.....	23rd St. Stores
"	.....	.....	.....	410,217	.....	"	102.55	.....	"
"	.....	.....	1,754,802	.....	.....	"	438.70	.....	Del. Ave. Stores
"	.....	.....	.....	10,323	3,987,544	"	2.58	996.88	"
May 31	61156	June	1,532,161	.....	.....	"	383.04	.....	23rd St. Stores
"	.....	.....	.....	832,835	.....	"	208.21	.....	"
"	.....	.....	2,164,734	.....	.....	"	541.18	.....	Del. Ave. Stores
"	.....	.....	.....	128,292	4,658,022	"	32.07	1,164.50	"
June 30	72188	July	1,483,322	.....	.....	"	370.83	.....	23rd St. Stores
"	.....	.....	.....	518,290	.....	"	129.57	.....	"
"	.....	.....	1,734,750	.....	.....	"	433.69	.....	Del. Ave. Stores
"	.....	.....	.....	544,125	4,280,487	"	136.03	1,070.12	"
July 30	81468	Aug.	1,957,544	.....	.....	"	489.39	.....	23rd St. Stores
"	.....	.....	.....	658,035	.....	"	164.51	.....	"
"	.....	.....	1,952,898	.....	.....	"	488.22	.....	Del. Ave. Stores
"	.....	.....	.....	66,047	4,634,522	"	16.51	1,158.63	"

EXHIBIT No. 52—Continued

Date of claim	Paid by voucher No.	Date of voucher	Inbound tonnage lbs.	Outbound tonnage lbs.	Total tonnage lbs.	Rate of allowance per ton	Amount paid	Total of voucher	Service at
Aug. 31	94712	Sept.	1,577,987	.....	.....	$.50	394.50	.....	23rd St. Stores
"	....	....	.....	624,415	.....	"	156.10	.....	"
"	....	....	1,648,530	.....	.....	"	412.13	.....	Del. Ave. Stores
"	....	....	.....	.....	3,850,932	"	.....	962.78	"
Sept. 30	101616	Oct.	1,357,619	.....	.....	"	339.40	.....	23rd St. Stores
"	....	....	.....	616,990	.....	"	154.25	.....	"
"	....	....	1,308,475	.....	.....	"	327.12	.....	Del. Ave. Stores
"	....	....	.....	100,908	3,383,992	"	25.23	846.00	"
Oct. 31	114299	Nov.	2,073,841	.....	.....	"	518.46	.....	23rd St. Stores
"	....	....	.....	638,715	.....	"	159.68	.....	"
"	....	....	1,611,357	.....	.....	"	402.84	.....	Del. Ave. Stores
"	....	....	.....	40,340	4,364,253	"	10.09	1,091.07	"
Nov. 30	123964	Dec.	1,925,945	.....	.....	"	481.49	.....	23rd St. Stores
"	....	....	.....	600,835	.....	"	150.21	.....	"
"	....	....	2,790,129	.....	.....	"	697.53	.....	Del. Ave. Stores
"	....	....	.....	241,800	5,558,709	"	60.45	1,389.68	"
1928		1928							
Jan. 4	11234	Jan.	1,536,969	.....	.....	"	384.24	.....	23rd St. Stores
"	....	....	.....	767,630	.....	"	191.91	.....	"
"	....	....	1,289,368	.....	.....	"	322.34	.....	Del. Ave. Stores
"	....	....	.....	804,887	4,398,844	"	201.22	1,099.71	"
Year 1927			43,199,614	7,881,964	51,081,578		$12,770.37	$12,770.37	

[fol. 874]

39—635

Statement of Bills of Pennsylvania Warehousing and Safe Deposit Company

1926		1926							
May 31	54780	May	.....	.....	.....	Monthly minimum	$1.458.33	$1,458.33	
June 30	63420	June	.....	.....	.....	"	1,458.37	1,458.37	
July 31	73264	July	.....	.....	.....	"	1,458.33	1,458.33	
Aug. 31	102309	Oct.	2,232,160	.....	.....	.50 per ton	558.04	.....	23rd St. Stores
"	.....	.....	1,468,962	.....	.....	"	367.24	.....	Del. Ave. Stores
"	.....	.....	.....	.....	3,701,122	"			
Sept. 30	"	"	1,056,461	.....	.....	"	264.12	.....	23rd St. Stores
"	.....	.....	749,748	.....	.....	"	187.43	.....	Del. Ave. Stores
"	.....	.....	.....	100,750	1,906,959	"	25.19	1,402.02	"
Oct. 30	124300	Dec.	1,805,275	.....	.....	"	451.32	.....	23rd St. Stores
"	.....	.....	.....	289,070	.....	"	72.27	.....	Del. Ave. Stores
"	.....	.....	1,372,677	.....	3,467,022	"	343.17	.....	"
Nov. 30	"	"	2,551,175	.....	.....	"	637.79	.....	23rd St. Stores
"	.....	.....	.....	160,500	.....	"	40.13	.....	"
"	.....	.....	1,644,127	.....	.....	"	411.03	.....	Del. Ave. Stores
"	.....	.....	.....	.....	4,355,802	"	.....	1,955.71	
		1927							
Dec. 31	15891	Jan.	1,107,302	.....	.....	"	276.83	.....	23rd St. Stores
"	.....	.....	.....	116,698	.....	"	29.17	.....	"
"	.....	.....	1,453,481	.....	.....	"	363.37	.....	Del. Ave. Stores
"	.....	.....	.....	.....	2,677,481		.....	669.37	"
May 1 to December 31, 1926			15,441,368	667,018	16,108,386		$8,402.13	$8,402.13	

EXHIBIT No. 52—Continued

Date of claim	Paid by voucher No.	Date of voucher	Inbound tonnage lbs.	Outbound tonnage lbs.	Total tonnage lbs.	Rate of allowance per ton	Amount paid	Total of voucher	Service at
[fol. 875]		Statement of Bills of Pennsylvania Warehousing and Safe Deposit Company							
1928		1928							
Jan. 31	23512	Feb.	947,361	.....	.....	$.50	$236.84	.....	23rd St. Stores
"	"	"	.....	506,780	.....	"	149.20	.....	"
"	"	"	1,595,880	.....	.....	"	398.97	.....	Del. Ave. Stores
"	"	"	.....	89,188	3,229,209	"	22.30	807.31	"
March 3	31822	March	1,609,667	.....	.....	"	402.42	.....	23rd St. Stores
"	"	"	.....	452,660	.....	"	113.16	.....	"
"	"	"	1,377,491	.....	.....	"	344.37	.....	Del. Ave. Stores
"	"	"	.....	72,621	3,512,439	"	18.15	878.10	"
April 4	41922	April	1,566,077	.....	.....	"	391.52	.....	23rd St. Stores
"	"	"	.....	758,660	.....	"	189.67	.....	"
"	"	"	1,699,308	.....	.....	"	424.83	.....	Del. Ave. Stores
"	"	"	.....	.....	4,024,045		.....	1,006.02	
May 2	51500	May	1,341,408	.....	.....	"	335.35	.....	23rd St. Stores
"	"	"	.....	586,455	.....	"	146.61	.....	"
"	"	"	1,413,251	.....	.....	"	353.31	.....	Del. Ave. Stores
"	"	"	.....	.....	3,341,117		.....	835.27	
May 31	60796	June	1,142,824	.....	.....	"	285.71	.....	23rd St. Stores
"	"	"	.....	278,892	.....	"	69.72	.....	"
"	"	"	1,430,022	.....	.....	"	357.50	.....	Del. Ave. Stores
"	"	"	.....	40,925	2,892,663	"	10.23	725.16	"
Jan. 1 to May 31, 1928....			14,123,292	2,876,181	16,999,473		4,249.86	4,249.86	
Total May 1, 1926 to May 31, 1928			72,764,274	11,425,163	84,189,437		25,422.36	25,422.36	
less May, June, July 1926			.....	.....	.....		4,375.03	4,375.03	
Aug. 1, 1926 to May 31, 1928			72,764,274	11,425,163	84,189,437		21,047.33	21,047.33	

Agreement dated Aug. 2, 1926.

EXHIBIT NO. 53 603

4065 Jan 12 1897

Agreement

Philadelphia & Reading
Railway Company

— with —

The Pennsylvania Ware-
housing & Safe Deposit Co.

Relative to Sixteenth Street
Stores

Phila. & Reading Railway Co.
Secretary's Office.
Record Papers.
No. 4065

1206

Joseph S. Harris, Edward M. Paxson, John [illegible] Welsh, Receivers of

PHILADELPHIA & READING RAILWAY CO.

The Philadelphia & Reading Railroad Co.

Secretary's Office, Reading Terminal

Philadelphia April 15, 1897.

Gentlemen:-

I inclose herewith for your information, the agreement dated January 12, 1897, between the Philadelphia & Reading Railway Company and the Penna. Warehousing Company, in relation to the 16th Street Stores.

After you have made such notations as you may desire for the purposes of your department, please return the agreement to me.

Yours respectfully,

[signature]

Secretary.

Mr. C. H. Henderson,
Mr. J. H. Loomis,
Mr. D. Jones.
Mr. B.H.Bail.

Noted [illegible] J.H.L. 4-29-97

Noted [illegible] 4/14/97

Noted [illegible] 4/30/97

877

Philadelphia & Reading Railway Co
Office of the Second Vice President
Reading Terminal

Philadelphia May 4, 1897.

W. R. Taylor, Esq.,
Secretary.

Dear Sir,--

I enclose herewith copy of a letter which Mr. Bail was authorized to write to Mr. Griffith concerning our accounts with the Penna. Warehousing Co. under the contract with them together with copy of Mr. Griffith's reply, which letters should be filed with the contract.

Yours truly,

Second Vice President.

C.O P Y.

PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY.

Philadelphia, April 26th, 1897.

Mr. R. H. Bail,

G. F. A., P. & R. Ry.,

Dear Sir,—

I am in receipt of your favor of the 24th inst., and beg to state it covers my understanding of the matter.

I would suggest that, in order to avoid possible misunderstandings to include general merchandise as well as flour. It is, of course, understood that on shipments to which your Company only receives switching charges, it shall be optional with us whether we shall do the work or not; this is in accordance with the tenor of our lease.

Yours very truly,

Signed, E. B. Griffith,

Treasurer.

607

COPY. PHILADELPHIA, Apr. 24, 1897.

Mr. E. B. Griffiths,

Treas., Penna. W.H.& C.S.Co.,

113 So. 3rd St., Phila.

Dear Sir:

Referring to conversation in Vice-President Henderson's office April 21st, regarding compensation to be allowed your Company on shipments of flour only, which are consigned to your stores, and which are not handled or stored by you; that is, not unloaded and loaded again, but which owners or consignee wish switched or ticketed to deliveries in various districts within the city limits as may from time to time be agreed upon between your company and this company. For such service rendered in way of notification to consignees or owners, collection of charges, etc., etc., we are willing to allow your Company 10 cents per ton, it being understood that this arrangement will apply only on shipments for which this company has received earnings other than switching charges. This is the same arrangement that existed before the present agreement became effective between our respective companies. Will you kindly confirm your understanding of the matter.

Yours truly,

signed B. H. Bail,

Gen. Frgt. Agt.

380

Philadelphia & Reading Railway Co.
Office of the Second Vice President
Reading Terminal
Philadelphia Mar. 25, 1897.

J. D. Campbell, Esq.,
Gen'l Solicitor.

Dear Sir,-

I enclose you herewith contract between the Pennsylvania Warehousing Company and the Philadelphia & Reading Railway Co., together with several letters covering certain changes which become a part of the contract.

Will you kindly see to its execution at the proper time.

Yours truly,

Second Vice-President.

881

609

Philadelphia & Reading Railway Co.
Office of the Second Vice President
Reading Terminal
Philadelphia, March 24th, 1897.

Richard Y. Cook, Esq.,
V.P. Penna. Warehousing & Safe Deposit Co.,
113 So. Third Street, Phila.

Dear Sir,—

I beg to acknowledge receipt of your letter of the 22nd inst., and hereby confirm your understanding as set forth therein.

Yours truly,

Second Vice President.

882

610

Philadelphia & Reading Railway Co

Office of the Second Vice President

COPY.

Reading Terminal

Philadelphia Mar. 18,1897.

Richard Y. Cook, Esq.,

Vice Pres. Penna. W. H. & B. D. Co.,

113 So. 3rd St., Phila.

Dear Sir,-

Referring to your letter of the 5th inst. addressed to J. D. Campbell, Esq., General Solicitor, P. & R. Ry. Co., enclosing form of contract for the lease and operation of the Sixteenth St. Stores socalled, between this Company and your Company, I beg to say on behalf of this Company that the interlineations proposed by you and mentioned in your letter are approved and accepted, that is to say, insert on the 6th page the words "or by the construction of the sub-way", and on the third page the words "by Railway Company".

On the subject of transportation for your agent who will travel and solicit business under the provisions of the contract, it is our understanding that we will furnish free transportation over our own lines, and will make due application for free transportation over connecting lines. We cannot guarantee success from our applications, but will agree to make all proper efforts under the rules, for that purpose.

With this modification of your letter the contract will be satisfactory to us, and will be executed by us as soon as you have made title to the Reading Company. I have you one fair copy for execution on the proper time and retain the other to be executed on our part.

Kindly confirm this modification of your letter.

Yours truly,
signed, C.E.Henderson,
2nd Vice President.

883

011

[illegible] TO BE SENT TO 115 SOUTH THIRD STREET.

[illegible], President. RICHARD Y. COOK, Vice-President. E. E. GRIFFITHS, Treasurer and Gen'l Supt. C. WILLIAM [illegible], Secretary.

DIRECTORS: [illegible]

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 113 AND 115 SOUTH THIRD STREET.

CAPITAL ISSUED (FULL PAID), $500,000
SURPLUS, $500,000
UNDIVIDED PROFITS, $100,000

Philadelphia, March 22nd., 1897.

C.E.Henderson, Esq., 2nd Vice-President,

Phila. & Reading Railway Co.,

Terminal Sta., Phila.

Dear Sir:-

I am in receipt of your favor of the 18th inst., and find the same satisfactory. I now understand that we are to operate the 10th Street stores under the provisions of the contract enclosed with your letter above mentioned, the same being operative as regards all contracting parties, notwithstanding the same has not been executed in due form. I further understand this contract will be signed by all parties thereto as soon as we have made title to the Reading Company for the 10th Street stores, and that we shall have advice from you when you desire the title perfected in yourselves.

Very truly yours,

Rich. Y. Cook
Vice-President.

P. S. May I ask for an acknowledgement of receipt of this.

884

ALL COMMUNICATIONS TO BE SENT TO 113 SOUTH THIRD STREET.

GEORGE H. EARLE, Jr., President. RICHARD Y. COOK, Vice-President. E. R. GRIFFITHS, Treasurer and Gen'l Supt. C. WILLIAM FUNK, Secretary

DIRECTORS

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 113 AND 115 SOUTH THIRD STREET.

CAPITAL ISSUED (FULL PAID),	$500,000
SURPLUS,	$500,000
UNDIVIDED PROFITS,	$100,000

Philadelphia, March 8th., 1897.

J.D.Campbell, Esq.,

General Solicitor Philadelphia & Reading Ry.Co.

Dear Sir:-

We enclose you the contract, in which we have only inserted on the sixth page the words, 'or by the construction of the Subway', and on the third page the words, "by Railway Company."

We understand that our agents, who will travel and solicit business, under the provisions of the contract, will be furnished by Railway Company with transportation over its own and connecting lines to their destination.

If you accept these interlineations, with this understanding, we now say that the proposed contract is one entirely acceptable to us, and will be executed by us as soon as the Railway Company is in a position to execute. Any action since January 1st., 1897, will be by us upon the basis of this contract, as if the same were executed.

Yours very truly,

Richard Y. Cook

Vice-President.

6/18/97

885

THIS AGREEMENT, Made this Twelfth day of January A.D.1897, by and between the PHILADELPHIA AND READING RAILWAY COMPANY, hereinafter called the RAILWAY COMPANY, party of the first part, and THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, a corporation of the State of Pennsylvania, hereinafter called the WAREHOUSING COMPANY, party of the second part;

WITNESSETH, That the RAILWAY COMPANY has granted, demised and let, and by these presents does grant, demise and let unto the WAREHOUSING COMPANY for the term of one year, unless this lease is sooner determined by virtue of the provisions hereof, from January 1st, 1897, at the rate of Twelve thousand seven hundred and fifty dollars ($12,750.), to be paid monthly in instalments of $1062.50;

ALL THAT CERTAIN lot or piece of ground, and brick warehouse thereon erected, situate in the Fifteenth Ward of the City of Philadelphia, State of Pennsylvania, bounded and described as follows, to-wit;-

BEGINNING at the northeast corner of Callowhill and Sixteenth streets, thence extending northward along the east side of said Sixteenth street one hundred and ninety-two (192) feet to the South side of Pennsylvania avenue, thence extending eastwardly along the south side of said Pennsylvania avenue one hundred and thirty-seven (137) feet to a point, thence extending southwardly parallel with said Sixteenth street one hundred and ninety-two (192) feet to the north side of said Callowhill street, thence westwardly along the north side of said Callowhill street one hundred and thirty-seven (137) feet to the corner of said Sixteenth street, the place of beginning. Containing six hundred and three one-thousandths (.603) of an acre.

SUBJECT, NEVERTHELESS, to the payment of the said rents so reserved as aforesaid, and to the prompt, full and faithful performance by the WAREHOUSING COMPANY of each of the several covenants and stipulations hereinafter contained and written to be kept and performed by it, and to the right of the RAILWAY COMPANY on the happening of any default hereunder, or at any time on three (3) months notice, to re-enter upon and re-possess the whole of the said demised premises as of its first and former estate as hereinafter provided.

EXCEPTING AND RESERVING, however, out of this demise the right of the RAILWAY COMPANY to demand and require the occupation and use of the demised premises by the WAREHOUSING COMPANY for the handling and storage of merchandise transported and to be transported over the railroads of the RAILWAY COMPANY as hereinafter mentioned and

and described.

TO HAVE AND TO HOLD the said premises to the said WAREHOUSING COMPANY for and during the said term of one year, and thereafter until either of the parties hereto shall have given three (3) months notice to the other of its intention to terminate this lease, unless this lease shall have been sooner determined by virtue of the provisions hereof.

IN CONSIDERATION WHEREOF, the said WAREHOUSING COMPANY hereby covenants and agrees to and with the RAILWAY COMPANY as follows, that is to say:-

FIRST:- To pay to the RAILWAY COMPANY as rent for the demised premises the sum of Twelve thousand seven hundred and fifty dollars ($12,750.) per annum, payable in equal monthly instalments of One thousand sixty-two dollars and fifty cents ($1,062.50), and to be paid monthly on or before the last day of the month for which the same shall accrue, and also to punctually and faithfully pay all taxes National, State, County or City, including water rents, which may at any time during the term of this agreement be levied or assessed against the property hereby demised or upon the improvements thereon erected or the contents thereof, whether the same be assessed against the land or improvements or contents, separately or as a whole.

SECOND:- At all times while in possession of the demised premises, to keep up and maintain, at its own expense, the warehouse thereon, and the machinery therein, in good condition, repair and working order; to establish and maintain therein at all times a sufficient force including superintendence, labor and appliances for the purposes herein set forth; promptly and expeditiously to handle, store, receive and deliver all merchandise or commodities which shall be delivered to said warehouse by the RAILWAY COMPANY for storage and delivery to consignees, or which on the request of the RAILWAY COMPANY shall be deposited at such warehouse by consignors for transportation by said RAILWAY COMPANY, to the full capacity of said warehouse if so much shall be required for said business, including the loading and unloading of all cars; to keep and store such merchandise for the period of ten (10) days, or so much thereof and for so much of said period as shall be required from time to time by the RAILWAY COMPANY; to appoint at least one agent who in addition to the General Superintendent of the WAREHOUSING COMPANY (at present Mr. T. B. Griffiths) shall maintain a careful supervision of the operation of the warehouse; shall solicit consignments over the RAILWAY COMPANY'S lines to warehouse, by mail

and by personal application to local shippers and consignees; and one of whom shall visit Western shippers of flour in September and March of each year, or more frequently if suggested by the RAILWAY COMPANY and approved by the WAREHOUSING COMPANY for the purpose of securing consignments over the lines of the RAILWAY COMPANY to and through said warehouse; to perform all the said services and conduct the whole of the said business in a prompt and efficient manner, without charge or expense to the RAILWAY COMPANY, except as herein otherwise expressly provided.

THIRD:- To make the consignees or consignors no other or greater charge or charges for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being by other warehousing companies for similar services upon the lines of the Pennsylvania Railroad, or warehousing companies on the lines of the Baltimore and Ohio Railroad, in the City of Philadelphia, unless the consent of the RAILWAY COMPANY to make higher charges shall be given in writing; to pay to the RAILWAY COMPANY when merchandise shall be delivered by it to said WAREHOUSING COMPANY, weekly, all freights and charges due upon said merchandise which shall accrue up to the time of such delivery; it being understood and agreed that for the amount of said charges so paid and until the same are collected from the actual consignees or owners of said merchandise, on delivery of the same to them, the said WAREHOUSING COMPANY shall be entitled to the benefits of a lien on such merchandise and shall have the right and privilege to enforce the same in the name of the said RAILWAY COMPANY to the use of the said WAREHOUSING COMPANY. To keep up a floating policy of insurance, sufficient to cover all property delivered to said WAREHOUSING COMPANY, by RAILWAY COMPANY, so as to meet all claims for losses or damage by fire to consignments while the same are in the custody of the WAREHOUSING COMPANY during a period of ten (10) days, and to apply the insurance money so received to the payment of said claims.

FOURTH:- Not to assign this lease in whole or in part, nor underlet the demised premises or any part or portion of the same, without the written consent of the RAILWAY COMPANY first had and obtained.

FIFTH:- To deliver up peaceable possession of the demised premises to the RAILWAY COMPANY on the first day of January, A.D. 1898, if demanded, or at any time either before or after that date upon receiving three (3) months written notice so to do from the said RAILWAY COMPANY, or at any time upon the demand of the RAILWAY COMPANY upon the happening of any default of the WAREHOUSING COMPANY to keep and

perform any of the covenants of this lease on its part to be kept and performed, notwithstanding the fact that the WAREHOUSING COMPANY may have been paying rent after the expiration of the term hereinbefore created, and but for this covenant would be in possession as tenant from year to year. PROVIDED, HOWEVER, that no determination of the said tenancy shall be effective to require the surrender of possession by the WAREHOUSING COMPANY of so much or such parts of the warehouse as shall be actually occupied by goods and merchandise against which any warehouse receipts shall be outstanding; but all storage charges which shall accrue after the expiration of three months from the date of the termination of this lease, shall be collected by the WAREHOUSING COMPANY, and by it accounted for and paid over to the RAILWAY COMPANY.

AND IN CONSIDERATION OF the said several covenants and of the facilities to be provided and the services to be so performed as aforesaid by the WAREHOUSING COMPANY, the said RAILWAY COMPANY covenants and agrees as follows:-

FIRST:- To construct or cause to be constructed, and to maintain during the [illegible]unce of this agreement, the necessary track connections between its main tracks and the said warehouse. PROVIDED, HOWEVER, that, pending the completion of the changes in the tracks of the RAILWAY COMPANY now being made under contract with the City of Philadelphia, and until permanent track connections into said warehouse can be completed, the necessary labor for loading and unloading cars on the temporary tracks shall be supplied and furnished by the WAREHOUSING COMPANY. PROVIDED, HOWEVER, that the said temporary tracks shall be so laid as to permit cars to be brought thereon to a point within three squares of the said warehouse, when it shall be the duty of the WAREHOUSING COMPANY, in consideration of the terminal charge herein agreed to be paid, to load and unload such cars for all consignors or consignees who shall bring their shipments to and receive their goods from said cars. Should the inability of the RAILWAY COMPANY to deliver cars into the warehouse be prolonged beyond a period of two (2) weeks, the expense of cartage between the cars and the said warehouse shall thereafter be borne by the RAILWAY COMPANY in addition to the other payments herein provided for.

SECOND:- To deliver to the WAREHOUSING COMPANY, during the continuance of this contract, for storage and warehousing only, in cars on said track connections, permanent or temporary, so far as under existing contracts it may be able to do so, all flour which it, the RAILWAY COMPANY, can control, which shall have been trans-

ported over its lines and consigned for delivery to local points in the City of Philadelphia within the district bounded by Broad street on the East, by Girard avenue on the North, by the Schuylkill River on the West and by South street on the South; and all general merchandise (except as hereinafter otherwise provided) which shall have been transported by it for delivery within the said limits which the RAILWAY COMPANY may desire to place in store; to the full capacity of said warehouse (reserving the right to store any excess over the capacity of said warehouse at any other point or place); to constitute and appoint the WAREHOUSING COMPANY as its, the RAILWAY COMPANY'S agent and warehouseman for all such merchandise so delivered by the RAILWAY COMPANY, such agency to extend, however, only to the receipt, storage and delivery of consignments to and from the RAILWAY COMPANY, and to the collection of the freights and charges thereon; but such agency shall not be held or taken to relieve the WAREHOUSING COMPANY from its liability or responsibility as a warehouseman, nor from claims for loss or damage which may arise by reason of its own acts or omissions. PROVIDED, HOWEVER, that the WAREHOUSING COMPANY shall not be required by virtue hereof to receive or keep in store any of the following articles:- Acids, Alcohol, Broom Corn, Cotton, Cotton Wadding or Bats, Hay or Straw, Hemp, Jute, Jute Yarns, Jute Butts, Jute Rejections, Lime, Naval Stores, Oils, Paints, Paper Stock, Rags, Saltpetre, Sisal Grass, Turpentine, Varnish, Whiskey, Nitre or Nitrates; but the WAREHOUSING COMPANY shall nevertheless handle the same or such parts or proportions thereof as will not affect the present rate of insurance, and shall for that purpose receive consignments of the same unless and until it shall notify the RAILWAY COMPANY not to accept consignments thereof through the said warehouse.

THIRD:- To pay to the said WAREHOUSING COMPANY, as a terminal allowance for the facilities so to be afforded and the services so to be rendered as hereinbefore provided, thirty (30) cents per ton, gross or net according to classification, for each and every ton of merchandise received, handled and stored by the WAREHOUSING COMPANY; save and except such merchandise as shall have been shipped to or from the waters of New York Bay, or via New York to or from points beyond, as to which New York traffic the RAILWAY COMPANY shall pay twenty-five (25) cents per ton, gross or net according to classification, for such facilities and services; to make payments of all amounts to accrue under this paragraph during each month, on or before the fifteenth day of the succeeding month. PROVIDED, HOWEVER, that the said payments

shall not be made by the RAILWAY COMPANY in respect of any merchandise transported by it for which it shall have only rendered a switching or transfer service, to or from other lines of railroad or to or from other warehouses, in which case the WAREHOUSING COMPANY may decline to receive such merchandise in any case where it shall be unable to collect said terminal charge from the person or railroad Company offering to send the same to said warehouse.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED by and between the parties hereto as follows, that is to say:-

FIRST:- That, notwithstanding any of the provisions hereof, either party hereto shall have the right and privilege of terminating this contract and the term hereby demised, upon giving to the other three (3) months notice in writing of its intention so to do.

SECOND:- That, immediately at and upon any default of the WAREHOUSING COMPANY well and faithfully to keep and perform any of the several covenants and stipulations herein contained and written by it the said WAREHOUSING COMPANY to be kept and performed, the RAILWAY COMPANY may at its option re-enter upon said demised premises and take possession of the same, and any and all structures, buildings, improvements and appurtenances thereon erected and thereunto belonging, and all right, title, interest and estate of the WAREHOUSING COMPANY in and to the same and every part thereof shall thereupon cease and determine, and the same shall at once vest in the said RAILWAY COMPANY.

THIRD:- That, notwithstanding the termination of this agreement for any cause by virtue of any of the provisions hereof, each party shall have recourse against the other for any balance of money that shall have accrued under any of the covenants and stipulations hereof, including a just and proper allowance to the WAREHOUSING COMPANY for any proportionate overpayment on account of rent or taxes.-

FOURTH:- It is not intended by any clause herein contained providing for the maintenance and return of the premises in good condition, repair and working order, that the WAREHOUSING COMPANY shall be obligated to make good any loss or injury to the demised premises occasioned by fire or by action of the elements, or by the Construction of the Subway. In case of such injury it shall be the duty of the RAILWAY COMPANY to repair the damage or injury without delay unless such damage shall be material and substantial, in which case the RAILWAY COMPANY may elect so to repair the damage or injury, or to terminate this lease, at its option. To such extent as the business shall be in-

terfered with during the time of such repair there shall be an allowance of rent in proportion to the time consumed in the reparation of the portion of the building thereby affected. The covenant to surrender in good order shall be subject to this understanding, that such surrender shall be subject to injury occasioned in the way designated.

IN WITNESS WHEREOF, the parties hereto have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year first above written.

The words "by RAILWAY COMPANY" after the word "COMPANY" in the FOURTH line from the end of clause THIRD page 3, and the words "or by the construction of the Subway" after the word "elements" in the fourth line of clause FOURTH, page 6, having been inserted before execution.

as to Geo. W. Earle Jr.
Richd. J. Williams
As to Geo. W. Earle, Jr.
W. P. Wilson

PHILADELPHIA AND READING RAILWAY COMPANY.

By,

President.

ATTEST:

Secretary.

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY.

By,

George W. Earle Jr.

President.

ATTEST:

William Funk

Secretary.

EXHIBIT No. 54

4578

Agreement

Philadelphia & Reading
Railway Company

—— and ——

The Penna. Warehousing
and Safe Deposit Co

Leasing Seventh St. Stores

Phila & Reading Railway Co.
Secretary's Office
Record Papers
No. 4578

READING COMPANY

ATLANTIC CITY RAILROAD CO.
CAMDEN & BURLINGTON COUNTY RAILROAD CO.
THE BALTIMORE & HARRISBURG RAILROAD CO.
THE NORTH EAST PENNSYLVANIA R.R. CO.

PENNSYLVANIA RAILROAD COMPANY
THE PHILA. & CHESTER VALLEY R.R. CO.
THE PHILA. NEWTOWN & NEW YORK R.R. CO.
PHOENIXVILLE RAILROAD CO.

THE PORT READING RAILROAD CO.
READING & COLUMBIA R.R. CO.
SPRING CREEK RAILROAD CO.
THE WILLIAMS VALLEY RAILROAD CO.

FREIGHT TRAFFIC DEPARTMENT
OFFICE OF THE FREIGHT TRAFFIC MANAGER
READING TERMINAL
PHILADELPHIA

April 5, 1926.

File Spl 370

Mr.E. W. Oescher, Secty.,
Penna. Warehousing & Safe Deposit Co.,
113-115 So. 3d St., Philadelphia.

Dear Sir:

This acknowledges and I thank you for your letter March 26th, which confirms our understanding that you are handling freight for our account under the same terms and conditions as covered by agreement at 16th St. Stores, and extended by letter of the General Freight Agent of this Company July 8, 1898, to cover Delaware Ave. Stores No. 2, comprising warehouses located as follows:

400-426 So. Delaware Ave.
738-748 " " "
743-753 " Swanson St.
Delaware Ave. & Poplar Sts.
400-418 So. Water St.
778-786 So. Delaware Ave.
778-787 So. Swanson St.
800-808 So. Delaware Ave.
801-809 So. Swanson St.
756-774 So. Swanson St.

.....

Very truly yours,

Hcs/IFM

Freight Traffic Manager

COPY

Philadelphia & Reading Railway Company

General Freight Department

Philadelphia, July 8, 1898.

Mr. E. P. Griffiths,
Treasurer, Penna. Warehousing & Safe Deposit Co.,
113 So. 3d St., Philadelphia.

Dear Sir:

Referring to conference with the writer and Vice President Henderson, relative to a terminal allowance for your Company on traffic arriving over our system of roads and connecting lines other than that on which this Company receives a switching charge and when consigned direct to your Delaware Ave. Store No. 2. We are willing to consider such traffic on the same basis and under the same conditions as that now charged direct to 16th St. Stores, with the understanding that on such traffic when consigned direct to Delaware Ave. Stores, that your Company assume the Belt Line charge, which I understand is $1.50 per car. This arrangement to become effective Monday July 11th.

Very truly yours,

G.F.A.

GEORGE H. EARLE, JR.
L. D. BEGGS
RALPH EARLE
E. W. OESCHER
M. J. GOEHL
W. T. JUSTICE
H. B. HIGMAN

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 113 AND 115 SOUTH THIRD STREET

CAPITAL AND SURPLUS OVER - - $1,250,000

CABLE ADDRESS "WAREHOUSE"

ADDRESS ALL COMMUNICATIONS TO THE COMPANY

Mr. H. C. Stauffer,
Freight Traffic Manager,
Reading Company,
Reading Terminal,
Philadelphia, Pa.

PHILADELPHIA
March 28, 1926.

Dear Sir:

Referring to our conversation of the 25th instant relative to terminal allowances covering Delaware Avenue Stores #2 made in 1898. As you are aware, Delaware Avenue Stores #2 is only one building, and it has always been understood that this allowance agreement covers any warehouses operated by us in the vicinity of the Delaware River Front, and the buildings are given names by us merely to designate delivery points for the drivers when they call for merchandise.

COPY

At the present time the addresses of these Warehouses are as follows:

400-426 So. Delaware Avenue
738-748 So. Delaware Avenue
743-753 So. Swanson Street
Delaware Avenue and Poplar Street
400-418 So. Water Street
778-786 So. Delaware Avenue
779-787 So. Swanson Street
800-808 So. Delaware Avenue
801-809 So. Swanson Street
756-774 So. Swanson Street

We trust that we have not caused you any inconvenience by giving our buildings either different names or numbers, and if it complicates matters for you, we could call all our buildings Delaware Avenue Stores #2.

Yours very truly,

Secretary.

O:M.

Jan. 28th., 1907

C.E.Henderson, Esq., 2d Vice President,
Phila. & Reading Ry.Co.,
Terminal Sta., Phila.

Dear Sir:-

Referring to your letter of the 25th inst., I beg to advise you that it will be entirely satisfactory to the Penna. Warehousing & Safe Deposit Co. to reduce the period of free storage on flour from ten days to four days, at your request, so that said free period will then correspond in length of time with the free storage given to other merchandies.

We understand that this modification will take place on April 1st., 1907, and that copies of this letter (of which you will find herewith) attached to the contracts for the operations of the Port Richmond and 16th St.Stores will have the effect of modifying the said two agreements in the particular herein mentioned.

Truly yours,

Pennsylvania Warehousing & S.D.Co.,

By Oscar G. Cook

Vice President.

Approved:
Geo. F. Baer
Pres't.

(inclosures)

898

Philadelphia & Reading Railway Co.

Office of the Second Vice President.

Reading Terminal

C. E. Henderson
Second Vice President

Philadelphia January 25th, 1907.

Richard Y. Cook, Esq.,
Vice Pres't., Penna. Warehousing & Safe Deposit Co.,
Philadelphia, Pa.

Dear Sir:-

Enclosed please find a letter from our General Freight Agent, Mr. B. H. Bail, relative to the free time on flour handled by the Pennsylvania Warehousing & Safe Deposit Company.

Mr. Bail informs me in conversation that Mr. Bright seemed entirely satisfied with the proposed arrangement, and I take it that he has communicated with you on the subject.

This contract, as you are aware, has been executed by the President of the two Companies, and its terms should not be changed by their subordinates without being approved by their principals.

If, as seems to be the case, this meets with your approval, I will thank you to so advise me, giving your approval in the letter, and I will then submit it to our President and have copies of both letters, ratifying its terms, attached to and made part of the contract.

With this purpose in view will you kindly send two letters, one of which may be returned to you to be attached to your copy of the contract, and the other retained by us to be attached to our copy of the contract.

Yours truly,

(Signed) C.E.Henderson.

Second Vice President.

899

Philadelphia & Reading Railway Co
Office of the Second Vice President
Reading Terminal

Philadelphia, May 3, 1898.

W. B. Taylor, Esq.,
Secretary.

Dear Sir,—

Enclosed, please find correspondence constituting a modification of the lease for the 16th Street Stores, which I send for file in your office with the agreement.

Kindly acknowledge receipt, and oblige,

Yours truly,

Second Vice President.

900

Philadelphia & Reading Railway Co

Office of the Second Vice President

Reading Terminal

Philadelphia April 2nd, 1878.

Copy

E. B. Griffith, Esq.,

Treasurer, Penna. W.H.& S.D.Co., Phila.

Dear Sir,

The Rules and Regulations regarding storage in Philadelphia agreed to by the various Transportation and Storage Warehouse Companies, to which you are a party, make some changes in the storage regulations of the 16th Street Warehouse, and because the agreementbetween the various Railroad and Storage Companies differs from that between your Company and ours, and because we are each willing that the modification shall be made, I think it advisable that we should have a formal acceptance of this change on the part of both Companies, and will you please write me a letter giving consent of your Company to such change,(which is to take effect May 16th) to which I can reply consenting thereto.

Yours truly,

Signed C. E. Pemberton

Second Vice President.

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ALL COMMUNICATIONS TO BE SENT TO 113 SOUTH THIRD STREET.

CHAS. M. EARLE, Jr., President. RICHARD Y. COOK, Vice President. E. S. GRIFFITHS, Treasurer and Gen'l Supt. WM. BONSEL, Jr. [redacted] Secretary

DIRECTORS

Pennsylvania Warehousing and Safe Deposit Co.

BANKING HOUSE: NOS. 113 AND 115 SOUTH THIRD STREET.

CAPITAL ISSUED (FULL PAID)	$500.000
SURPLUS.	$500.000
UNDIVIDED PROFITS.	$100.000

CABLE ADDRESS—"WAREHOUSE."

Philadelphia, May 2nd. 1898

C. E. Henderson Esq. 2nd. Vice-President.

Reading Terminal , 12th & Market Sts. Philada,

Dear Sir:-

Understanding from your letter of the 29th. ultimo, that it is the desire of the Philadelphia & Reading Railway Co that we should consent to a modification of the conditions of our lease for the 16th. St. Stores , which modification shall limit the period of free storage for all merchandise, excepting flour, received over your lines and on which we get a terminal , to four(4) days, not including Sundays, holidays or the day of arrival , we beg to advise you that we are entirely willing to make such modification , understanding , however, that all the other conditions and terms of our lease remain in full force and effect.

Very truly yours

Pennsylvania Warehousing & Safe Dep'Co

by [signature]
Treasurer

902

629

Philadelphia & Reading Railway Co

Office of the Second Vice President

Reading Terminal

Philadelphia May 3rd, 1898.

E. B. Griffith, Esq.,

Treas., P.W.& S.D.Co.,

113 So. 3rd Street, City.

Dear Sir,--

I have your favor of the 2nd inst. in which you consent to a modification of the lease for the Sixteenth Street Stores, limiting the period of free storage for all merchandise, except flour, received over the Philadelphia & Reading Railway and on which your Company gets a terminal to four (4) days not including Sundays, Holidays and day of arrival, the other conditions of the lease remaining in effect.

We will file your letter as part of the agreement, the understanding being that the modification as expressed in your letter shall be in force as long as the agreement between the various Roads, which goes into effect May 16th, 1898, shall continue in force. If the same should be cancelled at any time, your letter will be returned to you.

Yours truly,

Second Vice President.

903

THIS AGREEMENT, Made this Twelfth day of December A. D. 1901, by and between the PHILADELPHIA AND READING RAILWAY COMPANY, hereinafter called the RAILWAY COMPANY, party of the first part, and THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, a corporation of the State of Pennsylvania, hereinafter called the WAREHOUSING COMPANY, party of the second part;

WITNESSETH, That the RAILWAY COMPANY has granted, demised and let, and by these presents does grant, demise and let unto the WAREHOUSING COMPANY for the term of one year, unless this lease is sooner determined by virtue of the provisions hereof from November 1st, 1900, at the rate of Sixteen Thousand six hundred and seventy-four dollars and sixty cents ($16,674.60), to be paid monthly in instalments of One Thousand three hundred and eighty-nine dollars and fifty-five cents ($1,389.55);

ALL THAT CERTAIN lot or piece of ground and brick warehouse thereon erected, situate in the Fifteenth Ward of the City of Philadelphia, State of Pennsylvania, bounded and described as follows, to wit:-

BEGINNING at the northeast corner of Callowhill and Sixteenth Streets, thence extending northward along the east side of said Sixteenth Street one hundred and ninety-two (192) feet to the south side of Pennsylvania Avenue, thence extending eastwardly along the south side of said Pennsylvania Avenue one hundred and thirty-seven (137) feet to a point, thence extending southwardly parallel with said Sixteenth Street forty-one (41) feet, thence extending eastwardly parallel to said Callowhill Street forty and nine-tenths (40.9) feet, thence southwardly parallel to said Sixteenth Street one hundred and fifty-one (151) feet to the north side of said Callowhill Street, thence westwardly along the north side of said Callowhill Street one hundred and seventy-seven and nine-tenths

(177.9) feet to the corner of said Sixteenth Street, the place of Beginning.

SUBJECT, NEVERTHELESS, to the payment of the said rents as reserved as aforesaid, and to the prompt, full and faithful performance by the WAREHOUSING COMPANY of each of the several covenants and stipulations hereinafter contained and written to be kept and performed by it, and to the right of the RAILWAY COMPANY on the happening of any default hereunder, or at any time on three (3) months' notice, to re-enter upon and repossess the whole of the said demised premises as of its first and former estate as hereinafter provided.

EXCEPTING AND RESERVING, however, out of this demise the right of the RAILWAY COMPANY to demand and require the occupation and use of the demised premises by the WAREHOUSING COMPANY for the handling and storage of merchandise transported and to be transported over the railroads of the RAILWAY COMPANY as hereinafter mentioned and described.

TO HAVE AND TO HOLD the said premises to the said WAREHOUSING COMPANY for and during the said term of one year, and thereafter until either of the parties hereto shall have given three (3) months' notice to the other of its intention to terminate this lease, unless this lease shall have been sooner determined by virtue of the provisions hereof.

IN CONSIDERATION WHEREOF, the said WAREHOUSING COMPANY hereby covenants and agrees to and with the RAILWAY COMPANY as follows, that is to say:

FIRST:- To pay to the RAILWAY COMPANY as rent for the demised premises the sum of Sixteen Thousand, six hundred and seventy-four dollars and sixty cents ($16,674.60) per annum, payable in equal monthly instalments of One Thousand, three hundred and eighty-

nine dollars and fifty-five cents ($1,389.55), and to be paid monthly on or before the last day of the month for which the same shall accrue, and also to punctually and faithfully pay all taxes, National, State, County or City, including water rents, which may at any time during the term of this agreement be levied or assessed against the property hereby demised or upon the improvements thereon erected or the contents thereof, whether the same be assessed against the land or improvements or contents, separately or as a whole.

SECOND:- At all times while in possession of the demised premises, to keep and maintain, at its own expense, the warehouse thereon, and the machinery therein, in good condition, repair and working order; to establish and maintain therein at all times a sufficient force, including superintendence, labor and appliances for the purposes herein set forth; promptly and expeditiously to handle, store, receive and deliver all merchandise or commodities which shall be delivered to said warehouse by the RAILWAY COMPANY for storage and delivery to consignees, or which on the request of the RAILWAY COMPANY shall be deposited at such warehouse by consignors for transportation by said RAILWAY COMPANY, to the full capacity of said warehouse if so much shall be required for said business, including the loading and unloading of all cars; to keep and store such merchandise for the period of ten (10) days or so much thereof and for so much of said period as shall be required from time to time by the RAILWAY COMPANY; to appoint at least one agent who in addition to the General Superintendent of the WAREHOUSING COMPANY (at present Mr. R. H. Griffiths) shall maintain a careful supervision of the operation of the warehouse; shall solicit consignments over the RAILWAY COMPANY'S lines to warehouse by mail and by personal application to local shippers and consignees; and one of whom shall visit Western shippers of flour in September

and March of each year, or more frequently if suggested by the RAILWAY COMPANY and approved by the WAREHOUSING COMPANY for the purpose of securing consignments over the lines of the RAILWAY COMPANY to and through said warehouse; to perform all the said services and conduct the whole of the said business in a prompt and efficient manner, without charge or expense to the RAILWAY COMPANY, except as herein otherwise expressly provided.

THIRD:- To make the consignees or consignors no other or greater charge or charges for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being by other warehousing companies for similar services upon the lines of the Pennsylvania Railroad, or warehousing companies on the lines of the Baltimore & Ohio Railroad, in the City of Philadelphia, unless the consent of the RAILWAY COMPANY to make higher charges shall be given in writing; to pay to the RAILWAY COMPANY when merchandise shall be delivered by it to said WAREHOUSING COMPANY, weekly, all freights and charges due upon said merchandise which shall accrue up to the time of such delivery; it being understood and agreed that for the amount of said charges so paid and until the same are collected from the actual consignees or owners of said merchandise, on delivery of the same to them, the said WAREHOUSING COMPANY shall be entitled to the benefits of a lien on such merchandise and shall have the right and privilege to enforce the same in the name of the said RAILWAY COMPANY to the use of the said WAREHOUSING COMPANY. To keep up a floating policy of insurance, sufficient to cover all property delivered to said WAREHOUSING COMPANY by RAILWAY COMPANY, so as to meet all claims for losses or damage by fire to consignments while the same are in the custody of the WAREHOUSING COMPANY during a period of ten (10) days, and to apply the insurance money so received to the

payment or said claims.

FOURTH:- Not to assign this lease in whole or in part, nor underlet the demised premises or any part or portion of the same, without the written consent of the RAILWAY COMPANY first had and obtained.

FIFTH:- To deliver up peaceable possession of the demised premises to the RAILWAY COMPANY on the first day of November A. D. 1901, if demanded, or at any time either before or after that date upon receiving three (3) months written notice so to do from the said RAILWAY COMPANY, or at any time upon the demand of the RAILWAY COMPANY upon the happening of any default of the WAREHOUSING COMPANY to keep and perform any of the covenants of this lease on its part to be kept and performed notwithstanding the fact that the WAREHOUSING COMPANY may have been paying rent after the expiration of the term hereinbefore created, and but for this covenant would be in possession as a tenant from year to year. PROVIDED, HOWEVER, that no determination of the said tenancy shall be effective to require the surrender of possession by the WAREHOUSING COMPANY of so much or such parts of the warehouse as shall be actually occupied by goods and merchandise against which any warehouse receipts shall be outstanding; but all storage charges which shall accrue after the expiration of three months from the date of the termination of this lease shall be collected by the WAREHOUSING COMPANY, and by it accounted for and paid over to the RAILWAY COMPANY.

AND IN CONSIDERATION OF the said several covenants and of the facilities to be provided and the services to be so performed as aforesaid by the WAREHOUSING COMPANY, the said RAILWAY COMPANY covenants and agrees as follows:-

FIRST:- To construct or cause to be constructed, and to maintain during the continuance of this agreement, the necessary

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track connections between its main tracks and the said warehouse.

SECOND:- To deliver to the WAREHOUSING COMPANY during the continuance of this contract, for storage and warehousing only, in cars on said track connections, so far as under existing contracts it may be able to do so, all flour which it, the RAILWAY COMPANY, can control, which shall have been transported over its lines and consigned for delivery to local points in the City of Philadelphia within the district bounded by Broad Street on the East, by Girard Avenue on the north, by the Schuylkill River on the west and by South Street on the South; and all general merchandise (except as hereinafter otherwise provided) which shall have been transported by it for delivery within the said limits which the RAILWAY COMPANY may desire to place in store; to the full capacity of said warehouse (reserving the right to store any excess over the capacity of said warehouse at any other point or place); to constitute and appoint the WAREHOUSING COMPANY as its, the RAILWAY COMPANY'S, agent and warehouseman for all such merchandise so delivered by the RAILWAY COMPANY, such agency to extend, however, only to the receipt, storage and delivery of consignments to and from the RAILWAY COMPANY, and to the collection of freights and charges thereon, but such agency shall not be held or taken to relieve the WAREHOUSING COMPANY from its liability or responsibility as a warehouseman, nor from claims for loss or damage which may arise by reason of its own acts or omissions. PROVIDED, HOWEVER, that the WAREHOUSING COMPANY shall not be required by virtue hereof to receive or keep in store any of the following articles:- Acids, Alcohol, Broom Corn, Cotton Wadding or Bats, Hay or straw, Hemp, Jute, Jute Yarns, Jute Butts, Jute Rejections, Lime, Naval Stores, Oils, Paints, Paper Stock, Rags, Salipetre, Sisal Grass, Turpentine, Varnish, Whisky, Nitre or Nitrates; but the WAREHOUSING COMPANY shall nevertheless handle the same or such parts or pro-

portions thereof as will not affect the present rate of insurance, and shall for that purpose receive consignments of the same unless and until it shall notify the RAILWAY COMPANY not to accept consignments thereof through the said warehouse.

THIRD:- To pay to the said WAREHOUSING COMPANY, as a terminal allowance for the facilities so to be afforded and the services so to be rendered as hereinbefore provided, thirty (30) cents per ton gross or net according to classification, for each and every ton of merchandise received, handled and stored by the WAREHOUSING COMPANY, save and except such merchandise as shall have been shipped to or from the waters of New York Bay, or via New York to or from points beyond, as to which New York traffic the RAILWAY COMPANY shall pay twenty-five (25) cents per ton, gross or net, according to classification, for such facilities and services; to make payments of all amounts to accrue under this paragraph during each month, on or before the fifteenth day of the succeeding month. PROVIDED, HOWEVER, that the said payments shall not be made by the RAILWAY COMPANY in respect of any merchandise transported by it for which it shall have only rendered a switching or transfer service, to or from other lines of railroad or to or from other warehouses, in which case the WAREHOUSING COMPANY may decline to receive such merchandise in any case where it shall be unable to collect said terminal charge from the person or railroad Company offering to send the same to said warehouse.

IT IS FURTHER MUTUALLY COVENANTED AND AGREED by and between the parties hereto as follows, that is to say:-

FIRST:- That, notwithstanding any of the provisions hereof, either party hereto shall have the right and privilege of terminating this contract and the term hereby demised upon giving to the other three (3) months' notice in writing of its intention so to do.

SECOND:- That, immediately on and upon any default of the

WAREHOUSING COMPANY well and faithfully to keep and perform any of the several covenants and stipulations herein contained and written by it the said WAREHOUSING COMPANY to be kept and performed, the RAILWAY COMPANY may at its option re-enter upon said demised premises and take possession of the same, and any and all structures, buildings, improvements and appurtenances thereon erected and thereunto belonging, and all right, title, interest and estate of the WAREHOUSING COMPANY in and to the same and every part thereof shall thereupon cease and determine, and the same shall at once vest in the said RAILWAY COMPANY.

THIRD:- That, notwithstanding the termination of this agreement for any cause by virtue of any of the provisions hereof, each party shall have recourse against the other for any balance of money that shall have accrued under any of the covenants and stipulations hereof, including a just and proper allowance of the WAREHOUSING COMPANY for any proportionate overpayment on account of rent or taxes.

FOURTH:- It is not intended by any clause herein contained providing for the maintenance and return of the premises in good condition, repair and working order, that the WAREHOUSING COMPANY shall be obliged to make good any loss or injury to the demised premises occasioned by fire or by action of the elements. In case of such injury it shall be the duty of the Railway Company to repair the damage or injury without delay unless such damage shall be material and substantial, in which case the RAILWAY COMPANY may elect so to repair the damage or injury or to terminate this lease, at its option. To such as the business shall be interfered with during the time of such repair there shall be an allowance of rent in proportion to the time consumed in the reparation of the portion of the building thereby affected. The covenant to surrender in good order shall be subject to this understanding that such sur-

render shall be subject to injury occasioned in the way designated.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate seals to be hereunto affixed, duly attested, the day and year first herein written.

Signed, sealed and delivered in the presence of:-

PHILADELPHIA AND READING RAILWAY CO.
By
President.
Attest:
Secretary.

A. M. Bright

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, By
President.
Attest:
Secretary.

EXHIBIT No. 55

Agreement

Philadelphia and Reading Railway Co.

and

Pennsylvania Warehousing and Safe Deposit Company.

Port Richmond Warehouse

Phila & Reading Railway Co
Secretary's Office
Record Papers
No. 4577

COPY OF LETTER

PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT CO.

Nos 113 and 115 South 3d St,

Philadelphia, Pa

April 7, 1913

Mr John F. Auch,
Vice-Pres & Traffic Mgr , P & R. Ry Co.,
Philadelphia, Penna

Dear Sir:

Referring to your letter of March 22d, file C-84, relative to the elimination of Clause Ninth from the agreement of January 2nd, 1902, for the operation of the Port Richmond Stores, we beg to advise that the same has our approval under the terms and conditions of your letter above mentioned.

Very truly yours,

(signed) M. E Levering

Treasurer.

Philadelphia & Reading Railway Company.

OFFICE OF THE VICE PRESIDENT AND TRAFFIC MANAGER,
READING TERMINAL,
PHILADELPHIA.

COPY OF LETTER

April 8, 1915.

C-84

Mr. M. E. Levering,
Treasurer, Pennsylvania Warehousing and
Safe Deposit Company,
Philadelphia, Pa.

Dear Sir:

The agreement dated second day of January, 1902, between the Philadelphia & Reading Railway Company and the Pennsylvania Warehousing & Safe Deposit Company, which agreement provides for the operation of the Port Richmond Stores, contains a clause which reads as follows:-

> Ninth. The Railway Company shall move imported merchandise for storage in said warehouse, from its wharves or piers to said warehouse, at the rate of $2.00 per car.

This rate of $2.00 per car does not seem to have been used for many years, and in point of fact is not now in effect. Moreover, present conditions make it inadvisable to continue this clause in the agreement. I therefore propose and ask your assent to the entire elimination of the Ninth Clause as above quoted, effective at once, without, however, change or modification of the other several covenants of the agreement mentioned. Should the occasion again arise for a switching rate on imported

merchandise from our wharves or piers to said warehouse, the matter can be taken up and tariff provision made therefor in accordance with law.

Your early response and assent to this proposition will be much appreciated.

Yours very truly,

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Philadelphia & Reading Railway Company.

OFFICE OF THE VICE PRESIDENT AND TRAFFIC MANAGER,
READING TERMINAL,
PHILADELPHIA.

COPY OF LETTER

October 3, 1914.

C-84

Mr. M. E. Levering,
Treasurer,
Pennsylvania Warehousing & Safe Deposit Company,
Philadelphia, Pa.

Dear Sir:-

Referring to my letter of September 26th, relative proposed reduction from four days to two days in our new storage rules at Philadelphia:

We now find that in consequence of certain tariff complications, it will be impossible to make these new storage rules effective before November 15th.

Please note that my letter of date mentioned is hereby modified so as to make the effective date November 15th instead of November 6th, as previously stated.

Yours truly,

Secretary's Files -
4577 - Port Richmond Stores
4578 - 11th Street Stores

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Secretary's Files —
4577 - Port Richmond Stores
4578 - 16th Street Stores

COPY

PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT CO.

Philadelphia, Sept. 29, 1914.

Mr. J. F. Auch,
Vice President & Traffic Mgr., P. & R. Ry. Co.,
Reading Terminal, Phila.

Dear Sir:-

We are in receipt of your favor of the 26th instant relative to the proposed change in the free period of storage and insurance now in operation at our Warehouses, Port Richmond, 16th Street and Delaware Avenue Stores, and we understand that both your road and the Penna. Railroad will make effective as of November 6th, 1914, a reduction in the period to two days, and we beg to advise you that we will be pleased to meet your wishes that on and after November 6th, 1914, we reduce the present free period of storage and insurance to two days, assuming, of course, that the same action will be taken by the warehouses of the Penna. Railroad.

Will you kindly send to us for reference a copy of the tariff when filed.

Should you desire any special paper for this modification of the contract we will be pleased to have same executed.

We trust the above is in accordance with your wishes and remain,

Very truly yours,

(signed) M. E. Levering

Treasurer.

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Philadelphia & Reading Railway Company.

OFFICE OF THE VICE PRESIDENT AND TRAFFIC MANAGER.
READING TERMINAL.
PHILADELPHIA.

COPY OF LETTER

September 26, 1914.

Mr. Richard Y. Cook,
Vice President,
Pennsylvania Warehousing & Safe Deposit Company,
Philadelphia, Pa.

Dear Sir:-

The existing contracts between the Philadelphia & Reading Railway Company and the Pennsylvania Warehousing & Safe Deposit Company for the operation of the 16th Street Stores and Port Richmond Stores, as modified in 1907, provide for free storage period on all freight, including flour, of four days, this corresponding with the free storage period given by the railroad companies in Philadelphia at their stations.

We will issue tariffs, effective November 6th, 1914, making a reduction in the free time from the present four-day period to two days, and in order that the regulations in this respect shall be the same at your warehouses as at the railroad stations, it seems proper to suggest the further modification of the contracts, limiting the free storage period on flour and all other freight to two days, this same free time allowance to be also made at the Delaware Avenue Stores.

Assuming that the proposal to reduce the free time from four days to two days will meet with your approval, so as

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Mr. Richard Y. Cook

to make the free period at your warehouses uniform with the free time allowances at the railroad stations, I will attach copy of this letter to the agreements, and thank you for an acknowledgment assenting to the proposed changes or modifications that your approval may likewise be attached to said agreements.

We are advised by the Pennsylvania Railroad Company that they will arrange with Merchants Warehouse to reduce the free storage period to two days, effective November 6th, 1914.

Yours truly,

Jan. 28th, 1907.

C. F. Henderson, Esq., 2nd Vice President,
Philadelphia & Reading Ry. Co.,
Terminal Sta., Phila.

Dear Sir:-

Referring to your letter of the 25th inst., I beg to advise you that it will be entirely satisfactory to the Penna. Warehousing & Safe Deposit Co. to reduce the period of free storage on flour from ten days to four days, at your request, so that said free period will then correspond in length of time with the free storage given to other merchandise.

We understand that this modification will take place on April 1st., 1907, and that copies of this letter (four of which you will find herewith) attached to the contracts for the operations of the Port Richmond and 16th St. Stores will have the effect of modifying the said two agreements in the particular herein mentioned.

Truly yours,
Pennsylvania Warehousing & S. D. Co.,
By
(sgd) Rich'd Y. Cook.
Vice President.

Approved:
(sgd) Geo. F. Baer.
Pres't

(inclosures)

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Philadelphia & Reading Railway Co.

Office of the Second Vice President.

Reading Terminal.

Philadelphia, January 25th, 1907.

Richard Y. Cook, Esq.,

Vice Prest., Penna. Warehousing & Safe Deposit Co.,

Philadelphia, Pa.

Dear Sir:-

Enclosed please find a letter from our General Freight Agent, Mr. B. H. Rail, relative to the free time on flour handled by the Pennsylvania Warehousing & Safe Deposit Company.

Mr. Rail informs me in conversation that Mr. Bright seemed entirely satisfied with the proposed arrangement, and I take it that he has communicated with you on the subject.

This contract, as you are aware, has been executed by the President of the two Companies, and its terms should not be changed by their subordinates without being approved by their principals.

If, as seems to be the case, this meets with your approval, I will thank you to so advise me, giving your approval in the letter, and I will then submit it to our President and have copies of both letters, modifying its terms, attached to and made part of the contract.

With this purpose in view, will you kindly send me two letters, one of which may be returned to you to be attached to your copy of the contract, and the other retained by us to be attached to our copy of the contract.

Yours truly,

(signed) C. K. Henderson.

Second Vice President.

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THIS AGREEMENT, Made this Second day of January in the year one thousand nine hundred and Two (1902), between the PHILADELPHIA AND READING RAILWAY COMPANY, party of the first part, and the PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, party of the second part;

WITNESSETH, That the said Philadephia and Reading Railway Company has granted, demised and let, and by these presents does grant, demise and let, unto the said Pennsylvania Warehousing and Safe Deposit Company for the term of one (1) year, unless this lease is sooner determined by virtue of the provisions hereof, from the first day of January, 1902, at the rate of six thousand one hundred and eighty dollars per annum, to be paid in monthly installments of Five hundred and fifteen dollars ($515), the first payment to be made upon the first day of January, 1902, ALL THAT certain lot or piece of ground with the storage warehouse and other improvements thereon erected, situate in the Twenty-fifth Ward of the City of Philadelphia, beginning at the intersection of the southeasterly side of Richmond Street with the southwesterly side of William Street, thence extending southwesterly along the southeasterly side of the said Richmond Street one hundred and sixty-five feet to a point, thence southeasterly at right angles to the said Richmond Street one hundred feet to a point, thence northeasterly parallel to said Richmond Street one hundred and sixty-five feet to the southwesterly side of the said William Street, and thence northwesterly along the southwesterly side of said street one hundred feet to the place of beginning.

SUBJECT, Nevertheless, to the payment of the rent reserved as aforesaid, and to the prompt, full and faithful performance by the Warehousing Company of each of the several covenants and stipulations hereinafter contained on its part to be kept and performed.

and to the right of the said Railway Company, at the end of said term, or on the happening of any default hereunder, or at any time on three months' notice after the end of said term, to re-enter upon and repossess the whole of the said demised premises as of its first and former estate as hereinafter provided.

The said demised premises to be taken, held and used by said Lessee for the deposit, storage and handling of imported merchandize, appraised and unappraised, coming by vessels discharging at the piers of the Lessor, and of flour and merchandise to be transported and delivered by said Lessor pursuant to the provisions hereof. It being expressly agreed that any space in said warehouse not required by the Lessee for the storage of imported merchandise shall be used solely for the handling and storage of merchandise to be transported over the railway of the Philadelphia and Reading Railway Company, its leased and affiliated lines, except, however, should the entire available space, from time to time, not be required for the storage of imported merchandise or for flour and other merchandise to be transported over the said Railway Company's lines as above provided, then the said Warehousing Company shall be at liberty to occupy such unused space for storage of such other merchandise as it might desire to store in said warehouse.

And it is further distinctly understood and agreed between the parties hereto, and they hereby mutually covenant and agree with each other, for themselves, their respective successors and assigns, as follows:-

FIRST.- The Warehousing Company shall pay to the Railway Company the rent reserved as aforesaid as the same becomes due, and, in addition thereto, shall punctually and faithfully pay all taxes, National, State, County or City, including Water rents, which may be at any time during the term of this lease levied or assessed

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against the property hereby demised or upon the improvements thereon erected or the contents thereof, whether the same be assessed against the land or improvements or contents separately or as a whole, but not including, however, such rates and levies as shall be assessed against the premises or any part thereof for paving, curbing, sewers or other City improvements, or for benefits on account thereof.

SECOND,- The Warehousing Company shall, at its own cost and expense, at all times while in possession of the demised premises, keep up and maintain the warehouse and machinery therein in good condition, repair and working order, and keep the same insured from loss by fire to the amount of Ninety thousand dollars ($90000) in companies satisfactory to the Railway Company, but as long as said insurance shall be maintained shall be under no obligation to rebuild in case of destruction by fire or other unavoidable cause. Policies to the amount of Sixty thousand dollars of said insurance shall be made payable to the Girard Trust Company, Trustee, as its interest may appear, and the remaining portion of said insurance shall be made payable to the Lessor.

THIRD,- The Warehousing Company shall establish and maintain in said warehouse, at all times, a sufficient force, including superintendence, labor and appliances for the purpose herein set forth, to promptly and expeditiously handle, store, receive and deliver all merchandise or commodities which shall be delivered to said warehouse by the Railway Company for storage and delivery to consignees, to the full capacity of said warehouse if so much shall be required for said business, including the loading and unloading of all cars; and shall keep and store such merchandise for the period of ten (10) days, or so much thereof and for so much of said period as shall be required from time to time by the Railway Company. The General Superintendent of the Lessee shall maintain a careful supervision of the operation of the warehouse; shall so-

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licit consignments over the Railway Company's lines, or over vessels discharging at the Railway Company's piers, by mail or by personal application to shippers and consignees. And the Lessee shall perform all the said services and conduct the whole of the said business in a prompt and efficient manner, without charge or expense to the Railway Company, except as otherwise herein expressly provided.

FOURTH,- The Warehousing Company shall not make the consignees or consignors any other or greater charge or charges for services rendered in handling, receiving, storing or shipping merchandise than the charge or charges for the time being of other warehouse companies for similar services upon the lines of the Pennsylvania Railroad Company or the Baltimore and Ohio Railroad Company in the City of Philadelphia, unless the consent of the Railway Company to make higher charges shall be first obtained in writing. The Lessee shall pay to the Railway Company when merchandise shall be delivered by it to said Warehousing Company, weekly, all freights and charges due upon said merchandise which shall accrue up to the time of such delivery; it being understood and agreed that for the amount of said charges so paid, and until the same are collected from the actual consignees or owners of said merchandise, on delivery of the same to them, the said Warehousing Company shall be entitled to the benefit of a lien on such merchandise, and shall have the right and privilege to enforce the same in the name of the Railway Company to the use of the said Warehousing Company. The Lessee shall keep up a floating policy of insurance, sufficient to cover all property delivered to said Warehousing Company by the Railway Company, so as to meet all claims for loss or damage by fire to consignments while the same are in the custody of the Warehousing Company during a period of ten (10) days, and to apply the insurance money so received to the payment of said claims

FIFTH,- The Warehousing Company shall not assign this lease in whole or in part, nor underlet the demised premises, or any part or portion of the same, without the written consent of the Railway Company first had and obtained.

SIXTH,- The Warehousing Company shall deliver up peaceable possession of the demised premises to the Railway Company on the first day of January, 1903, if demanded, or at any time after that date upon receiving three (3) months' written notice so to do from said Railway Company, or at any time upon the demand of the Railway Company upon the happening of any default of the Warehousing Company to keep and perform any of the covenants of this lease on its part to be kept and performed, notwithstanding the fact that the Warehousing Company may have been paying rent after the expiration of the term hereinabove created, and but for this covenant would be in possession as tenant from year to year; PROVIDED, however, that no determination of the said tenancy shall be effective to require the surrender of possession by the Warehousing Company of so much of such parts of the warehouse as shall be actually occupied by goods and merchandise against which any warehouse receipts shall be outstanding; but all storage charges for such merchandise which shall accrue after the date of the termination of this lease shall be collected by the Warehousing Company, and by it accounted for and paid over to the Railway Company.

SEVENTH,- The Railway Company shall construct and maintain the necessary track connections between its tracks and said warehouse, and deliver to the Warehousing Company during the continuance of this lease, for storage and warehousing only, in cars on said track connections, such flour and other merchandise which it, the Railway Company, can control, and which shall have either been transported over its lines and consigned for delivery to points in the City of Philadelphia naturally tributary to the districts wi-

in which said warehouse is located,or merchandise which shall have been transported by vessels and discharged at the piers of the Railway Company at Port Richmond and the said Railway Company shall constitute and appoint the Warehousing Company as its, the Railway Company's, agent and warehouseman for all such merchandise so delivered by the Railway Company, such agency to extend, however, only to the receipt, storage and delivery of consignments to and from the Railway Company, and to the collection of freights and charges thereon, but such agency shall not be held or taken to relieve the Warehousing Company from its liability or responsibility as a warehouseman, nor from its claims for loss or damage which may arise by reason of its own acts or omissions; PROVIDED, however that the Warehousing Company shall not be required by virtue hereof to receive or keep in store any of the following articles: Acids, Alcohol, Broom Corn, Cotton, Cotton Wadding or Bats, Hay or Straw, Hemp, Jute, Jute Yarns, Jute Butts, Jute Rejections, Lime, Naval Stores, Oils, Paints, Paper Stock, Rags, Saltpetre, Sisal Grass, Turpentine, Varnish, Whiskey, Nitre or Nitrates, but the Warehousing Company shall handle the same or such parts or proportions thereof as will not effect the present rate of insurance, and shall for that purpose receive consignments of the same unless and until it shall notify the Railway Company not to accept consignments thereof through the said warehouse; PROVIDED, ALSO, that the preference shall at all times be given to the setting aside of sufficient space in said warehouse for the receipt and storage of imported merchandise, appraised and unappraised, and that only the remaining space shall be allotted to the handling and storage of other merchandise.

EIGHTH.- The Railway Company shall pay to the Warehousing Company, as a terminal allowance for the facilities so to be afforded and the services so to be rendered as hereinbefore provided, thirty

(30) cents per ton, gross or net according to classification, for each and every ton of merchandise received from the Railway Company and handled and stored by the Warehousing Company of eastbound traffic coming over the lines of the Railway Company; and shall make payments of all amounts to accrue under this paragraph during each month on or before the fifteenth day of the succeeding month; PROVIDED, however, that the said payments shall not be made by the Railway Company in respect of any merchandise transported by it for which it shall have only rendered a switching or transfer service to or from other lines of railroad, or to or from other warehouses, nor in respect of any westbound or import traffic; and PROVIDED FURTHER, that the Warehousing Company shall not be held or taken to be bound or obliged by virtue hereof to accept for storage any of such last mentioned merchandise save and except such imported merchandise as shall have been discharged upon the Railway Company's piers and wharves.

NINTH,- The Railway Company shall move imported merchandise for storage in said warehouse, from its wharves or piers to said warehouse, at the rate of Two dollars ($2.) per car.

TENTH,- Either party hereto shall have the right and privilege of terminating this lease by giving to the other three (3) months' notice in writing of its intention so to do.

ELEVENTH,- Immediately at and upon any default of the Warehousing Company well and faithfully to keep and perform any of the several covenants and stipulations herein contained on its part to be kept and performed, the Railway Company may, at its option, re-enter upon the demised premises and take possession of the same, and any and all structures, buildings, improvements and appurtenances thereon erected and thereunto belonging, and all right, title, interest and estate of the Warehousing Company in and to the same and every part thereof shall thereupon cease and determine, and the

same shall at once vest in the said Railway Company. It being understood that notwithstanding the termination of this lease for any cause by virtue of any of the provisions hereof, each party shall have recourse against the other for any balance of money that shall have accrued under any of the covenants and stipulations hereof, including a just and proper allowance to the Warehousing Company for any proportionate over payment on account of rent or taxes.

TWELFTH,- The hereinabove mentioned terminal charge of thirty (30) cents per ton to accrue upon merchandise to be stored in said warehouse on merchandise transported and delivered by said Railway Company shall be equal during each year to the whole amount of the rental and taxes, but excluding water rent, to be paid by the Warehousing Company under this lease, together with a fixed charge of Thirty-eight hundred dollars ($3800), or otherwise the said rental shall be abated proportionately; but, however, in case in any year the Warehousing Company shall have been unable or unwilling from any cause to receive from the Railway Company when offered, and take into said warehouse for storage up to the full capacity of said warehouse, any merchandise on which the said terminal charge would accrue if received and stored, the amount of such tonage so declined shall be deducted with like effect as though the same had been received and the said terminal charge paid thereon in computing the amount of the abatement from the said annual rental.

THIRTEENTH,- The Warehousing Company shall faithfully perform all the requirements of the law in respect to any imported merchandise which shall be held by it in bond or otherwise, and will at all times well and truly save, indemnify and keep harmless the Railway Company, and the said demised premises, free and clear of all claims of the Government for fines or forfeitures, or for from any other charge whatsoever arising, or to arise, from the neglect of the Warehousing Company to observe the provisions of the statutes,

and the rules and regulations established from time to time by the Secretary of the Treasury, or other orders pertaining to such imported merchandise and the storage and safe keeping thereof.

FOURTEENTH,- In case the demised premises shall be materially damaged by fire during the occupancy of the same by the Lessee, to such extent as to interrupt and prevent the carrying on of the business therein contemplated, the said lease and the term hereby created shall be at an end, unless the parties hereto shall agree to the contrary.

IN WITNESS WHEREOF, The said parties hereto have caused to be hereunto affixed their respective corporate seals, duly attested, the day and year first herein written.

Sealed and delivered in the presence of:

PHILADELPHIA AND READING RAILWAY CO.,
By
Geo. F. Baer
President.

Attest:
Secretary.

PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, By
President.

Attest:
Secretary.

EXHIBIT NO. 56

4887

SUPPLEMENTAL AGREEMENT.

Phila. & Reading Ry. Co.

and

Penna. Warehousing Company.

Jan. 25, 1905.

Modification of Lease dated Jan. 2, 1902, of "Port Richmond Stores".

Phila. & Reading Railway Co.
Secretary's Office
Record Paper.
No. 4887

December 12th, 1906.

George F. Baer, Esq.,

President.

Dear Sir,-

Mr. Richard Y. Cook, Vice President, Pennsylvania Warehousing and Safe Deposit Company, which rents the Port Richmond Stores, brought in a statement of account showing that he was making a loss on the operation of this warehouse, as stated in the enclosed letter.

You will recollect that under the old agreement which was made, our Company was losing money and I asked him to change the arrangement so that these losses should be stopped, and he agreed to pay a rental based on three per cent the first year, four per cent the second year and five per cent thereafter on the total capitalization. You will notice in the capitalization the land was included.

After talking the matter over with Mr. Cook, I stated to him that if he would send me a letter, I would recommend to you that we would for the next year, instead of requiring him to pay the five per cent on the total capitilization, assent to an adjustment of it to a payment for that year of four per cent on the total capitalization. I think, under all the circumstances, that this would be reasonable and recommend your approval of this arrangement.

It certainly seems to me that it would be far better for us to get four per cent than to run any risk of not having the building rented, as it is valuable to us aside from the rental which we get, and, under the circumstances, taking

the land value into consideration too, that four per cent is as much as we could reasonably demand from him, so long as he is making a loss in the operation of the plant.

Of course, under his contract with us, he could give it up on three months notice, but he has no purpose of giving such notice, and under all the circumstances, I make the recommendation, as above stated.

If this meets your views, will you kindly approve.

Yours truly,

Signed: C. E. Henderson

Second Vice President.

Approved
Signed Geo. F. Baer
President

Modification in basis of rent for Port Richmond Warehouse to 3 per cent first year, 4 per cent next year and thereafter 5 per cent. The per cent to apply wherever the 5 per cent now applies. Other items to be as at present.

Abrogation of the guarantee clause.

The contract to be subject to abrogation as now upon 90 days notice from either party.

Bonded warehouse proposition to be abandoned as at present; except in case of the restoration of the steamers to Port Richmond, it is to be resumed if found necessary by the Railroad Company.

Date February 1st.

Terminal 30 cents on tonnage actually handled through the warehouse by the Railway Company.

(Memorandum made by Mr. Henderson and Mr.Cook)

AN AGREEMENT, Made this Twenty-fifth day of January, A.D. 1905, between the PHILADELPHIA AND READING RAILWAY COMPANY, hereinafter called the RAILWAY COMPANY, of the first part, and the PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, hereinafter called the WAREHOUSE COMPANY, of the second part,

WITNESSETH THAT:

For divers good, valuable and sufficient considerations them thereunto moving, the said parties hereto have covenanted and agreed, and do hereby mutually covenant and agree to and with each other as follows, that is to say:-

FIRST: That the certain lease and agreement between the same parties, bearing date the second day of January, 1902, for the demise and operation of the property and premises at Richmond and Williams Streets, in the Twenty-fifth Ward of the City of Philadelphia, known as 'Port Richmond Stores', be and the same is hereby altered, amended and modified as follows, that is to say:-

I. The rental reserved in and by said lease and agreement is hereby reduced, so that the WAREHOUSE COMPANY shall pay from and after February 1, 1905, in lieu of the annual rental of six thousand one hundred and eighty dollars ($6,180.), payable in monthly installments, for the rental for the year to and January 31, 1906, the sum of Three thousand, seven hundred and eight dollars ($3,708), to be paid in monthly installments of Three hundred and nine dollars ($309), the first installment to be paid February 1, 1905; for the rental for the year to and January 31, 1907, the sum of Four thousand nine hundred and forty-four dollars ($4944), to be paid in monthly installments of Four hundred and twelve dollars ($412), the first installment to be paid February 1, 1906; and from and after February 1, 1907, the said rental shall remain as fixed and determined in and by the said lease and agreement of January 2, 1902, and be paid at the time and in the manner therein provided, save that the rental shall begin to accrue on the first day of February in each year during the continuance of said contract as hereby altered and amended and be payable in monthly installments in advance.

II. From and after February 1, 1905, the WAREHOUSE COMPANY shall be relieved from the payment of the taxes provided to be paid by it, in said contract of January 2, 1902, which the RAILWAY COMPANY shall thereafter assume and pay.

III. The twelfth article of the said lease and agreement is hereby cancelled and annulled, and the provisions thereof shall, from and after February 1, 1905, be held and taken to be void and of no effect.

IV. The operation of the thirteenth article of the said lease and agreement of January 2, 1902, is hereby suspended, with the right and privilege to the RAILWAY COMPANY to again put the same in full force and effect immediately on notice of its purpose so to do.

SECOND. In each and every other respect the provisions of the said lease and agreement of January 2, 1902, and save and except wherein the same are herein and hereby modified and changed, shall be and remain in full force and effect until either party shall give three months notice to the other of its intention to terminate the same, together with the provisions hereof.

IN WITNESS WHEREOF the said parties hereto have hereunto affixed their respective corporate seals, duly attested, the day and year first above written.

Signed, sealed and delivered in presence of:

H. A. Wallace

PHILADELPHIA AND READING RAILWAY COMPANY.

By, Geo. F. Baker
President.

Attest: [signature]
Secretary.

PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY.

By, Rich. Y. Cooke
Pres.

Attest: Wm. Pennell Jr.
Secy.

EXHIBIT NO. 57

4236

Agreement

Philadelphia & Reading
Railway Company

—— with ——

Philadelphia Warehousing
and Cold Storage Co.

Nov 4. 1898.

Warehouse at Delaware
Ave & Noble St.

Phila. & Reading Railway Co.
Secretary's Office.
Record Papers.
No. 4236

Philadelphia & Reading Railway Company

SECRETARY'S OFFICE

READING TERMINAL,

PHILADELPHIA.

COPY OF LETTER

November 20, 1922.

W-S

Mr. H. L. Russell,

Vice President.

Dear Sir:-

I am in receipt of your favor of the 18th instant, enclosing a communication from the Philadelphia Warehousing and Cold Storage Company, together with copy of your reply thereto, amending Clause 11 of the contract dated November 4, 1892.

I have had this correspondence attached to the original contract on file in this office.

Very respectfully,

Secretary.

COPY

PHILADELPHIA & READING RAILWAY COMPANY

Office of Vice President
Reading Terminal

Philadelphia, November 18, 1922.

File No. 115.

Mr. J. V. Hare, Secretary.

Dear Sir:-

I hand you herewith original letter from President Celss, of the Philada. Warehousing & Cold Storage Co., under date of November 17th together with copy of my acknowledgment thereof, which you will note constitutes a further amendment of Clause 11 of the contract of 1898 between the Philada.& Reading R'y Co. and the Philada. Warehousing & Cold Storage Co., whereby the terminal allowance of 60 cents per ton, made effective as of September 1st, 1920, on freight requiring cold storage, will be reduced to 50 cents per ton, effective January 1st, 1923.

Will you please attach these letters to the contract referred to.

Yours very truly;

(Signed) R.L.Russell.

Vice President.

PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

DELAWARE AVENUE, NOBLE, BEACH AND FRONT STREETS

PHILADELPHIA, PA. November 17th, 1922.

Philadelphia & Reading Railway Co.,

Mr. R. L. Russell, Vice-President,

Philadelphia, Pa.

Gentlemen:-

In accordance with the verbal arrangement made with you, it is undegstood that Clause 11 of the contract of 1898 between the Philadelphia & Reading Railroad Company and the Philadelphia Warehousing and Cold Storage Company for merchandise requiring cold storage that the terminal allowance which was increased from thirty-five cents per ton to sixty cents per ton as of September 1st, 1920, is reduced to fifty cents per ton, taking effect from January 1st, 1923.

It is our understanding that the rate of thirty cents per ton on merchandise not requiring cold storage remains unchanged. It is understood and agreed between your Company and this Company that the contract of 1898 remains in full force and effect other than modified as specified herein as to the rates above mentioned.

Yours truly,

[signature]

President.

Philadelphia & Reading Railway Co.

Office of Vice President,
Reading Terminal,

Philadelphia

November 18th, 1922.

File No. 115.

Mr. J.A. Geisz,
President, Philadelphia Warehousing & Cold Storage Co.,
Delaware Ave. & Noble Sts., Philada.

Dear Sir:-

I thank you for your letter of November 17th, confirming the arrangement recently discussed by us, whereby the allowance under contract of 1898, which was increased as of September 1st, 1920, from 3½ to 6½ per ton, will be reduced to 50 cents per ton, effective January 1st, 1923, applicable on merchandise requiring cold storage.

I confirm further the understanding that the rate of 3½ per ton on merchandise not requiring cold storage remains unchanged and that the contract of 1898 remains in full force and effect other than modification specified herein.

Yours very truly,

VICE PRESIDENT.

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Philadelphia & Reading Railway Co

Office of Vice President
Reading Terminal

Philadelphia October 23rd, 1920.

File No. 115.

Mr. R.L. Russell,

Freight Traffic Manager.

Dear Sir:-

Mr. Rice has approved the proposition to allow the Philadelphia Warehousing & Cold Storage Co. 40 cents per ton, instead of 25 cents per ton, on freight requiring cold storage handled by that Company for our account, effective September 1st, 1920.

I understand that you will write those people accordingly, stipulating that the contract is not otherwise changed.

Yours very truly,

(Signed) E.B. Crosley.

VICE PRESIDENT.

Mr. J.V. Hare,

You will receive from Mr. Russell copy of letter to the Philada. Warehousing & Cold Storage Co., stipulating the change above referred to.
E.B. Crosley.

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Philadelphia & Reading Railway Company

SECRETARY'S OFFICE

READING TERMINAL,

PHILADELPHIA.

COPY OF LETTER

November 1, 1920.

Mr. R. L. Russell,
Freight Traffic Manager.

Dear Sir:-

I am in receipt of your favor of this date, your file 3609, enclosing correspondence had with the Philadelphia Warehousing and Cold Storage Company in which it is agreed that certain increases in rates shall be made. The file has been attached to the original contract in this office.

Very respectfully,

Secretary.

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Philadelphia & Reading Railway Co

Freight Traffic Department

Office of Freight Traffic Manager

Reading Terminal

Philadelphia Nov. 1st, 1920.

File 3609

Mr. J. V. Hare, Secretary,
Philadelphia & Reading Railway Company,
Building.

Dear Sir:

I enclose herewith copy of my letter of October 25th to President J. A. Geisz, Philadelphia Warehousing & Cold Storage Company, and President Geisz's original letter of October 30th in reply thereto, same constituting an amendment of Clause 11, of the contract of 1898 between the Philadelphia & Reading Railway Company and the Philadelphia Warehousing and Cold Storage Company, whereby it is agreed that the terminal allowance of 35¢ per ton on freight requiring cold storage shall be increased to 60¢, effective as of September 1st, 1920. Will you please attach these letters to the contract referred to? The Comptroller has been advised accordingly.

Yours truly,

Freight Traffic Manager

RLR.FM

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Philadelphia & Reading Railway Co.

Freight Traffic Department

Office of Freight Traffic Manager

Reading Terminal

Philadelphia Oct. 25th, 1920.

File 3609

The Philadelphia Warehousing & Cold Storage Co.,
Mr. J. A. Geiss, President,
Philadelphia, Pa.

Gentlemen:

In connection with our correspondence and various conferences in the matter of terminal allowances as now covered by contract of 1898 between the Philadelphia & Reading Railway Company and the Philadelphia Warehousing & Cold Storage Company, I write to confirm the understanding reached between us that in view of the increase in labor cost we will make effective as of September 1st, 1920, rate of 60¢ per ton, gross or net, according to its classification, on commodities requiring cold storage, in place of the rate of 35¢ now provided as per Clause 11 of said contract; no change to be made in the rate as provided in same clause of 30¢ per ton on merchandise not requiring cold storage.

I would suggest that you write me confirming this understanding, with the further statement that it is understood and agreed between us that the amendment of the terminal allowance rate as per Paragraph 11 as herein stated in no wise changes the other stipulations of the said contract, and we will file these exchanged letters with the contract as a matter of definite record.

Yours very truly,

(Signed) R. L. Russell,

Freight Traffic Manager.

RLR.TH

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PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

DELAWARE AVENUE, NOBLE, BEACH AND FRONT STREETS

PHILADELPHIA, PA. October 30th, 1920.

File #3609

3609

Philadelphia & Reading Railway Co.,

Mr. R. L. Russell, Freight Traffic Manager,

Philadelphia, Pa.

NOV 1 1920

Gentlemen:-

We beg to acknowledge receipt of your letter of the 25th instant in which it is agreed that the Terminal allowance, as provided for in Clause 11 of the Contract of 1898 between our respective Companies, for Merchandise requiring cold storage, is increased from 35 cents per ton to 60 cents per ton, dating from September 1st, 1920.

It is our understanding that the rate of 30 cents per ton on merchandise not requiring cold storage remains unchanged.

It is understood and agreed between us that the contract of 1898 remains in full force and effect, other than the changes as specified herein.

Yours truly,

President

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Philadelphia & Reading Railway Company.

OFFICE OF THE VICE PRESIDENT AND TRAFFIC MANAGER.

READING TERMINAL COPY OF LETTER

PHILADELPHIA, October 3, 1914.

Mr. J. A. Geisz,
President,
Philadelphia Warehousing & Cold Storage Company,
Philadelphia, Pa.

Dear Sir:-

Referring to my letter of September 28th, relative proposed reduction from four days to two days in our new storage rules at Philadelphia:

We now find that in consequence of certain tariff complications, it will be impossible to make these new storage rules effective before November 15th.

Please note that my letter of date mentioned is hereby modified so as to make the effective date November 15th instead of November 6th, as previously stated.

Yours truly,

Vice President and
Traffic Manager.

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COPY

PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

Philadelphia, Pa.,

Sept. 30, 1914.

Mr. J. W. Auch,
Vice President and Traffic Manager,
Philadelphia & Reading Ry. Co.,
Philadelphia, Pa.

Dear Sir:-

We beg to acknowledge the receipt of your letter of the 18th inst., in which we note that on and after November 6th, 1914, two days free storage will be allowed, instead of four days, and we will be governed accordingly.

Yours truly,

(signed) J. A. Geiss

President.

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Philadelphia & Reading Railway Company.

OFFICE OF THE VICE PRESIDENT AND TRAFFIC MANAGER,
READING TERMINAL,
PHILADELPHIA.

COPY OF LETTER

September 28, 1914

Mr. J. A. Ueiss,
President,
Philadelphia Warehousing & Cold Storage Company,
Philadelphia, Pa.

Dear Sir:-

The existing contract between the Philadelphia & Reading Railway Company and the Philadelphia Warehousing & Cold Storage Company for the operation of its warehouse, as modified in 1899, provides for two days free storage on all merchandise requiring cold storage, and four days free storage on all other merchandise, this corresponding with the free storage period given by the railroad companies in Philadelphia at their stations.

We will issue tariffs, effective November 6th, 1914, making a reduction in the free time from the present four-day period to two days; and in order that the regulations in this respect shall be the same at your warehouse as at the railroad stations, it seems proper to suggest the further modification of the contract limiting the free storage period on all merchandise to two days.

Assuming that the proposal to reduce the free time from four days to two days will meet with your approval, as will also the proposition that the practice with re-

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spect to uniformity as between the railroad stations and your warehouse in the matter of free time allowances, I will attach copy of this letter to the agreement, and thank you for an acknowledgment assenting to the proposed changes or modifications so that your approval may likewise be attached to said agreement.

We are advised by the Pennsylvania Railroad Company that they will arrange with Merchants Warehouse to reduce the free storage period to two days, effective November 6th, 1914.

Yours truly,

Vice-President and Traffic Manager.

AGREEMENT Made this Twentieth day of April, 1909, between the PHILADELPHIA AND READING RAILWAY COMPANY, hereinafter called RAILWAY COMPANY, and the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, hereinafter called WAREHOUSE COMPANY, supplementary to agreement between the same parties, dated the fourth day of November, 1898, WITNESSETH:

WHEREAS, Since the execution of the agreement of November 4th, 1898, Warehouse Company has purchased a lot on the West side of Beach Street, Philadelphia, and running through to Front Street, Philadelphia, which lot is opposite to the warehouses referred to in the said agreement of November 4th, 1898; and

WHEREAS Warehouse Company is about to erect on a portion of said lot a eight story iron and brick warehouse, to be used in connection with the warehouses mentioned in the said agreement of November 4th, 1898, as part of the same plant, and may in the future erect upon the balance of the lot a further addition or extension to said contemplated warehouse;

NOW IT IS AGREED:

FIRST. For the purposes of the said agreement of November 4th, 1898, the storage warehouse which is about to be erected by Warehouse Company as aforesaid, on the lot on the West side of Beach Street, and any extension or addition thereto upon said lot, shall be considered as part of the cold storage plant of Warehouse Company, and as if said new Warehouse and any extension thereof had been expressly mentioned in said agreement of November 4th,

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1898, in addition to the two warehouses therein named, namely the one owned in fee simple by Warehouse Company and the one conveyed to Railway Company, reserving rights on the part of the Warehouse Company to operate for terms of years, as therein stated.

SECOND. All the conditions, covenants, stipulations and agreements with regard to freight delivered or to be delivered by Railway Company to Warehouse Company contained in said agreement of November 4th, 1895, shall apply, whether the said freight be stored in the two warehouses referred to in said agreement, or in the new warehouse or any extension thereof referred to in this agreement.

IN WITNESS WHEREOF the parties hereto have caused their corporate seals to be hereunto affixed the day and year aforesaid.

In presence of:

H. Wallace

PHILADELPHIA AND READING RAILWAY COMPANY.

By Geo. F. Baer President.

Attest:- Secretary.

PHILADELPHIA WAREHOUSING AND COLD STORAGE CO.

By. President.

Attest:- Secretary.

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Supplementary Agreement

Phil & Reading R.W.C.

and

Phil Warehousing & Cold Storage

4236

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Philadelphia & Reading Railway Co
Office of the Second Vice President
Reading Terminal

Philadelphia July 15, 1899

W. R. Taylor, Esq.,

Secretary.

Dear Sir,--

For your information and file with the original contract, I enclose herewith ~~copy of~~ letter from Mr. W. T. Robinson, President of the Phila. Warehousing & Cold Storage Co. consenting to the change in the period of free storage from ten days to four days.

Yours truly,

C. Henderson
Second Vice President.

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ROBINSON, President and Sup't. WM. P. BRENNEN, Vice-President. J. A. GEISZ, Sec'y and Treas.

Philadelphia Warehousing and Cold Storage Co.

Delaware Avenue and Noble Street

MEMBER "AMERICAN WAREHOUSEMEN'S ASSOCIATION"

Philadelphia, April 20th, 1899.

Mr.C.E.Henderson,

Secon Vice President, P & R.Ry.Co.,

Philadelphia.

Dear Sir:-

Replying to your letter of April 18th , relative to the free storage period on general merchandise in our contract with your Company, would state that the Philadelphia Warehousing & Cold Storage Company consents to the period being changed from ten days to four days, as per the Rules and Regulations regarding storage in Philadelphia between the various Railroads.

Yours respectfully,

W. T. Robinson

President.

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AGREEMENT made this Fourth day of November A. D. 1896, between the PHILADELPHIA AND READING RAILWAY COMPANY, hereinafter called the RAILWAY COMPANY, and the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, hereinafter called the WAREHOUSE COMPANY, both corporations of Pennsylvania, W I T N E S S E T H :-

WHEREAS, The READING COMPANY, hereinafter mentioned, also a corporation of Pennsylvania, is the owner of a certain lot of ground at Delaware Avenue and Noble Street, hereinafter described, now in use of the RAILWAY COMPANY, as lessee of the North Pennsylvania Railroad Company, for the operation of its railroad tracks and platform as a freight station; and

WHEREAS, The WAREHOUSE COMPANY is the owner of a lot of ground and storage warehouse adjoining said first mentioned lot; and

WHEREAS, a contract dated June 2, 1891, was heretofore entered into between the Philadelphia and Reading Railroad Company and the WAREHOUSE COMPANY, with regard to the carrying on of certain storage business, to which, with the various modifications thereof mutually agreed upon, the said RAILWAY COMPANY has become a party as successor to said Railroad Company; and

WHEREAS, increased storage accomodations are necessary at said point for the accomodation of the public, and it is desired by both said RAILWAY COMPANY and said WAREHOUSE COMPANY that such increased storage accomodations shall be secured; and

WHEREAS, after conference between the two Companies, it has been found that the most available means of accomplishing this desired result is by the erection of an additional storage building over the tracks and platform occupied by the said RAILWAY COMPANY on the aforesaid lot belonging to the said READING COMPANY adjoining the said WAREHOUSE COMPANY'S property;

N O W, In Consideration of the premises, of the mutual covenants hereinafter set forth, and of the sum of One Dollar ($1.00) by each of the said parties paid to the other, the receipt whereof is hereby acknowledged, it is agreed:-

FIRST. The RAILWAY COMPANY will cause the said READING COMPANY forthwith to grant, bargain, sell and convey unto the WAREHOUSE COMPANY, in fee simple, free of incumbrances;

ALL THAT CERTAIN PROPERTY, situated on the Northwest corner of Delaware Avenue and Noble Street, in the Fifteenth Ward of the City of Philadelphia, bounded as

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the North by the above mentioned property of THE PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, on the South by Noble Street, on the East by Delaware Avenue, and on the West by Beach Street, containing fronts on Delaware Avenue and Beach Street Sixty two (62) feet five and three quarters (5 3/4) inches, and a front on Noble Street of One hundred and fifty (150) feet two and one half (2 1/2) inches, reserving thereout for the use and occupation of the RAILWAY COMPANY, the platform and tracks now on said property; the WAREHOUSE COMPANY hereby agreeing to pay to the said READING COMPANY, as consideration for the said premises so to be conveyed, the sum of Twenty three thousand seven hundred and fifty dollars ($23,750);——

SECOND. The WAREHOUSE COMPANY agrees to, commence within s i x t y days from the delivery of the Deed for the said premises, and to continue with reasonable diligence until completion, the erection on said lot of ground, at its own expense, of a brick building, eight stories in height, the construction of which shall be of as permanent character as the existing building on the said adjoining lot of the WAREHOUSE COMPANY; the space below the second floor, which shall be twenty one (21) feet in the clear above the level of the tracks of the RAILWAY COMPANY, shall be occupied by the tracks and by the platform of the RAILWAY COMPANY, substantially as the same ground is now occupied, so as to allow the platform and tracks to be used and operated as they have been heretofore. The other seven stories are to be used by the WAREHOUSE COMPANY for the purposes of its business. The said WAREHOUSE COMPANY shall have the right, notwithstanding the conveyance of the said premises hereinafter provided for, in case of total or partial destruction of said building hereafter to re-erect the same subject to the provisions of this contract;——

THIRD. The said building shall be supported by steel or iron columns, except that on the South side there shall be a solid brick wall resting on a stone foundation, the columns and wall to be carried up to the height of the floor of the second story, the first story to remain open and be appropriated for the tracks of the RAILWAY COMPANY and the platform as aforesaid. It shall be so constructed as to allow reasonable methods of access by the WAREHOUSE COMPANY for persons and property to the upper floors of the said building from the ground floor upon plans to be approved by the RAILWAY COMPANY. The WAREHOUSE COMPANY shall have the right to make and maintain openings and connections between the building on its own lot and the floors of the proposed building above the first story. The WAREHOUSE COMPANY, in erecting the foundations and first story of the building herein provided for, shall have the

right to temporarily remove and alter the platform and tracks now on the said lot of ground, but only to the extent and for the time necessary for the prosecution of said work.

FOURTH. At and immediately upon the delivery of the aforesaid Deed from the said READING COMPANY conveying unto the said WAREHOUSE COMPANY and upon the payment therefor by the RAILWAY COMPANY to the WAREHOUSE COMPANY, of the sum of Twenty three thousand seven hundred and fifty dollars ($23,750), the WAREHOUSE COMPANY shall and will convey unto the RAILWAY COMPANY, the said above described lot or piece of ground so to be sold and conveyed by the READING COMPANY, by its Deed, containing the covenants, however, saving, excepting and reserving unto the WAREHOUSE COMPANY the right to erect and to maintain and operate in accordance with the stipulations hereof, for and during the term of Ninety nine (99) years from and after the Fourth day of November, A. D. 1898, the new storage warehouse to be erected upon the said lot, pursuant to the provisions of the Second and Third paragraphs hereof.

FIFTH. The WAREHOUSE COMPANY shall pay to the RAILWAY COMPANY, during the continuance of this contract for the maintenance and operation of the said new storage warehouse, the sum of Five hundred dollars ($500) per annum, from the date of the completion of the building to the termination of this contract, said payments to be made on the Fourth day of November in each year during which the same shall be payable, in advance, and shall also pay and discharge all taxes which shall be levied on the said premises, or on the improvements thereon, whenever and as often as the same shall become due and payable, during its occupancy of the said storage warehouse, except the sum of Two hundred and ninety six dollars ($296) per annum, the rate of taxation now assessed upon the premises which shall be paid by the RAILWAY CO.

SIXTH. The WAREHOUSE COMPANY covenants and agrees to keep up and maintain at its own expense, the new storage warehouse so to be constructed and its appurtenances, in good condition, repair and working order, and to maintain at all times, sufficient force, labor and appliances to promptly and expeditiously handle, store, receive and deliver merchandise and freight to the full capacity of said storehouse, and to load and unload all cars free of expense to the RAILWAY COMPANY. It being understood and agreed that, in the event of the destruction of said warehouse by fire or accident, the WAREHOUSE COMPANY shall not be obliged to rebuild the same, unless it shall elect to do so, and shall notify the RAILWAY COMPANY of its said election within ninety

days after said destruction; and, in case it shall elect to rebuild and shall give the said notice as before provided, then all the terms and conditions of this agreement shall be operative and apply to the reconstructed warehouse.

SEVENTH. The WAREHOUSE COMPANY shall pay to the RAILWAY COMPANY, when merchandise shall be delivered by it to the WAREHOUSE COMPANY, weekly, all freights and charges due upon said merchandise which shall accrue up to the time of such delivery; it being understood and agreed that for the amount of the said charges so paid, and until the same are collected from the actual consignees or owners of said merchandise on delivery of the same to them, the said WAREHOUSE COMPANY shall be entitled to the benefit of a lien on such merchandise, and shall have the right and privilege to enforce the same in the name of the RAILWAY COMPANY to the use of the WAREHOUSE COMPANY. The WAREHOUSE COMPANY shall keep up floating policies of insurance, sufficient to cover all property delivered to the WAREHOUSE COMPANY by the RAILWAY COMPANY, so as to meet all claims for losses or damages by fire to consignments while the same are in the custody of the WAREHOUSE COMPANY during a period of two (2) days, in respect of merchandise requiring cold storage, and for and in respect of all other merchandise for a period of ten (10) days and to apply the insurance money derived therefrom to the payment of claims for such loss or damage of such merchandise.

EIGHTH. The WAREHOUSE COMPANY shall not assign this contract in whole or in part, nor otherwise transfer its interest in the said new warehouse so to be erected, without the written consent of the RAILWAY COMPANY first had and obtained.

NINTH. The WAREHOUSE COMPANY shall at the end of the said term or period of ninety nine (99) years, vacate and deliver up to the RAILWAY COMPANY peaceable possession of the said warehouse so to be erected, or before that time whenever it shall cease to operate the said warehouse for the receipt and handling of merchandise delivered to it by the RAILWAY COMPANY pursuant to the provisions hereof, or whenever, in case of the total or partial destruction of the said warehouse, the WAREHOUSE COMPANY shall not restore the same in accordance with the provisions of paragraph Sixth hereof; PROVIDED, HOWEVER, that at the time of the surrender of such possession of the said warehouse hereunder, the WAREHOUSE COMPANY shall be at liberty to remove therefrom its personal property and effects, and also such machinery, fixtures and appliances as may be removable without injury to the building; AND PROVIDED

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FURTHER, That at the end of the said period of ninety nine years, the said WAREHOUSE COMPANY shall have the option to lease the said warehouse so to be constructed and to continue the use and occupation thereof in the manner and for the purposes herein provided for another term of ninety nine years, at an annual rental which shall be equal to the fair rental value of the premises so to be demised, to be fixed and determined by mutual agreement, and in case the parties shall fail to agree upon the amount of the said rental value, the same shall upon the request of either party be determined by arbitrators to be appointed in the manner and with the effect specified in the twelfth paragraph hereof. It being expressly understood and agreed that the WAREHOUSE COMPANY shall give to the RAILWAY COMPANY, notice of its intention to exercise its said option to take such lease, at least six months' prior to the expiration of the said first period of ninety nine years.

TENTH, The RAILWAY COMPANY covenants and agrees to deliver to the WAREHOUSE COMPANY, for general storage and warehousing either in its now existing warehouse or in the new warehouse so to be erected as hereinbefore provided, all consignments of freight which it may find necessary or desirable to store in other than its own warehouses at said locality, and to deliver to it for cold storage and warehousing, all consignments of dairy and other products, such as eggs, butter, cheese, poultry, etc., as can be controlled by it, and to make deliveries thereof upon the tracks in the immediate vicinity of the platforms of the RAILWAY COMPANY near such warehouses, which said merchandise requiring cold storage shall be entitled to free storage for a period of two (2) days, and all other merchandise shall be entitled to free storage for a period of ten (10) days. And it is understood and agreed that all loading and unloading of cars at said railway platforms shall be done by the WAREHOUSE COMPANY. The RAILWAY COMPANY hereby appoints the WAREHOUSE COMPANY as its, the RAILWAY COMPANY'S, agent and warehouseman for all such merchandise so to be delivered by the RAILWAY COMPANY, such agency to extend, however, only to the receipt, storage and delivery of consignments to and from the RAILWAY COMPANY, and to the collection of freight and charges thereon; but such agency shall not be taken or held to relieve the WAREHOUSE COMPANY from its liability or responsibility as a warehouseman, nor from claims for loss or damage which may arise by reason of its own acts or omissions; PROVIDED, HOWEVER, That the RAILWAY COMPANY hereby reserves the right, in case the WAREHOUSE COMPANY shall not furnish room therefor, to contract with others for such additional space as it may require.

SEVENTH. The RAILWAY COMPANY shall pay to the WAREHOUSE COMPANY, as a terminal allowance for the facilities so to be afforded, and the services so to be rendered as hereinbefore provided as aforesaid (that is to say, for the receiving, handling, free storage and insurance as before recited), the sum of thirty five cents per ton, gross or net, according to its classification for each and every ton of said merchandise, requiring cold storage received from the RAILWAY COMPANY, and handled and stored by the WAREHOUSE COMPANY, and the sum of thirty cents per ton for each and every ton of all other merchandise, not requiring cold storage received from the RAILWAY COMPANY and handled and stored by the WAREHOUSE COMPANY.

Payment of all amounts to accrue to the WAREHOUSE COMPANY during each month shall be made by the RAILWAY COMPANY on or before the fifteenth day of the succeeding month; PROVIDED, HOWEVER, that the said payments shall not be made by the RAILWAY COMPANY in respect of any merchandise transported by it for which it shall have only rendered a switching or transfer service to or from other lines of railroad or to or from other warehouses, in which cases the WAREHOUSE COMPANY shall be at liberty to decline to receive such consignments in any case where it may be unable to collect such terminal charges from the railroad company or person offering to send the same to said warehouse.

EIGHTH. This agreement shall be binding upon the parties hereto and enure to the benefit of their respective successors and assigns, and shall be held and taken to supersede and take the place of the before-mentioned contract between the WAREHOUSE COMPANY and the Philadelphia and Reading Railroad Company. It shall continue in effect only so long as the WAREHOUSE COMPANY shall continue to maintain and operate the said new storage warehouse as is to be erected as hereinbefore provided, save and except that the provisions hereof in respect of the time during which free storage shall be furnished by the WAREHOUSE COMPANY, and the rates to be paid by the RAILWAY COMPANY to the WAREHOUSE COMPANY for the above mentioned facilities and services, which shall be changed from time to time by mutual agreement so as to conform to the course of business at other railroad warehouses in the City of Philadelphia. In case the parties shall fail to agree upon a fair and reasonable increase or diminution of such time or charges, to best current competition, the same shall be determined by arbitration, each party to select an arbitrator, and the two so appointed shall select a third, and their determination or that of a majority of them shall be final and conclusive and be binding upon the parties, with like effect as though

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the terms thereof were submitted in this agreement, and in case of the failure of either party to nominate an arbitrator within thirty days after request of the other so to do the arbitrator appointed by the party not in default shall appoint a second arbitrator and the two so appointed shall select a third, and the decision of the arbitrators so appointed or a majority of them, shall, likewise be binding and conclusive upon the parties and neitherparty shall be at liberty to decline to enter upon, or afterwards to withdraw from such arbitration, but any award of such arbitrators shall be binding and conclusive, notwithstanding such withdrawal.

And it is further understood and agreed that the WAREHOUSE COMPANY shall make the consignees or consignors no higher charges for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being, for similar services, by other railroad warehouses in the City of Philadelphia, unless the consent of the RAILWAY COMPANY to make higher charges shall be first given in writing, and that in case it shall at any time be claimed that such consent shall be unreasonably withheld by the RAILWAY COMPANY, the matter in dispute shall be determined by arbitrators to be appointed in the manner and with the effect hereinbefore provided.

WITNESSETH, If at any time the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY is compelled to pay any money on account of liens or incumbrances existing against the lot of ground mentioned in this agreement, and prior to the execution hereof, or if it shall for its own protection, upon proceedings taken upon such liens or incumbrances, purchase any additional premises covered thereby, then the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, in addition to any other remedies against the PHILADELPHIA AND READING RAILWAY COMPANY shall have the right to continue this easement after the time hereinbefore limited for its continuance, until it shall be repaid any moneys so paid, and until the PHILADELPHIA AND READING RAILWAY COMPANY shall repurchase any premises which the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY shall have so purchased, at the price at which it purchased.

IN WITNESS WHEREOF, the said parties hereto have caused their corporate seals

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to be hereunto affixed, duly attested, the day and year aforesaid.

Note: In presence of:
After the word "warehouse" at end of Fifth paragraph, the interlineation of the following words: "except the sum of Two hundred and ninety six dollars ($296) per annum, the rate of taxation now assessed upon the premises which shall be paid by the RAILWAY CO.," before signing.

PHILADELPHIA AND READING RAILWAY COMPANY.

By:-

President.

Attest:-

Secretary.

THE PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY.

By:-

President.

Attest:-

Secretary.

State of Pennsylvania. }
County of Philadelphia } ss.

Be it Remembered, That on the Seventeenth day of December one thousand eight hundred and ninety eight before me, the subscriber, a Notary Public in and for said County personally appeared H. R. Taylor who, being duly sworn according to law, deposed and said that he is the Secretary of "Philadelphia and Reading Railway Company" the corporation named in the above and foregoing Agreement; that he was personally present at the execution of the said Agreement; and saw the corporate seal of the said Company affixed thereto; that J. S. Harris the President of the said Company, did then sign, seal, and deliver the said Agreement as the act and deed of the said Company, by virtue of the authority vested in him as such President, and desire that the said Agreement might be recorded as such act and deed; that the seal so affixed is the common or corporate seal of the said Company; that he, the deponent, at the same time signed his name to the said Agreement as a subscribing witness thereto, and as said Secretary in attestation of the due execution and delivery thereof; and that the names of the said President and of this deponent, subscribed to the said Agreement as aforesaid are of their own proper and respective handwriting.

Sworn and subscribed before me this day and year first aforesaid.

Witness my hand and Notarial Seal.

H. R. Taylor

Notary Public

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State of Pennsylvania, } ss.
County of Philadelphia

Be it Remembered, That on the Twenty third day of November one thousand eight hundred and Ninety eight before me, the subscriber, A NOTARY PUBLIC FOR THE COMMONWEALTH OF PENNSYLVANIA RESIDING IN THE CITY OF PHILADELPHIA

personally appeared J. A. Geisz who, being duly Sworn according to law, deposed and said that he is the Secretary of "The Philadelphia Warehousing and Cold Storage Company" the corporation named in the above and foregoing Agreement; that he was personally present at the execution of the said Agreement; and saw the corporate seal of the said Company affixed thereto; that W. T. Robinson the ——— President of the said Company, did then sign, seal, and deliver the said Agreement as the act and deed of the said Company, by virtue of the authority vested in him as such ——— President, and desire that the said Agreement might be recorded as such act and deed; that the seal so affixed is the common or corporate seal of the said Company; that he, the deponent, at the same time signed his name to the said Agreement as a subscribing witness thereto, and as said Secretary in attestation of the due execution and delivery thereof; and that the names of the said ——— President and of this deponent, subscribed to the said Agreement as aforesaid are of their own proper and respective handwriting.

Sworn and subscribed before me the day and year first aforesaid.

Witness my hand and Notarial seal

George Hauck
Notary Public

J. A. Geisz

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[fol. 967]

EXHIBIT No. 59

Witness: —— ——

I. C. C. Docket No. 20968

JAMES GALLAGHER ET AL.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Extracts from P. R. R. Station Lists Showing Merchants Warehouse Company Warehouses and Quaker City Cold Storage Company (Spruce St. Stores) as P. R. R. Stations

Station No.	Station	Issue
305	Kensington Includes Facilities of Merchants Warehouse Co. No. 3.	Sup. #5, PRR GO-ICC 402, 2-1-09. PRR GO-1CC 3800, 4-12-12. PRR GO-ICC 7000, 10-15-15. PRR GO-ICC 10000, 11-1-19.
309	Shackamaxon Station Includes all facilities of Merchants Warehouse Co. No. 4.	Sup. #42, PRR GO-ICC 402, 10-1-11. PRR GO-ICC 3800, 4-12-12. PRR GO-ICC 7000, 10-15-15.
	Change Includes all facilities of Merchants Warehouse Co. No. 4. Merchants Warehouse Co. No. 4 is under the jurisdiction of Shackamaxon Station, but is a separate and distinct delivery from Shackamaxon.	Sup. #31, PRR GO-ICC 7000, 9-1-18. PRR GO-ICC 10000, 11-1-19.
1034	Dock Street Station Includes all facilities of Merchants Warehouse Co. Nos. 5 & 6.	Sup. #42, PRR GO-ICC 402, 10-1-11. PRR GO-ICC 3800, 4-12-12. PRR GO-ICC 7000, 10-15-15.
	Change Includes all facilities of Merchants Warehouse Co. Nos. 5 & 6 (River Front Stores). Merchants Warehouse Co. (River Front Stores) is within the jurisdiction of Dock St. Station, but is a delivery separate and distinct from Dock St. Station and shipments in less than carload and carloads can be handled at this warehouse.	Sup. #31, PRR GO-ICC 7000, 9-1-18. PRR GO-ICC 10000, 11-1-19.

[fol. 968]

Station No.	Station	Issue
1034	Change	
	Includes all facilities of Merchants Warehouse Co. Nos. 5 & 6 (River Front Stores) and Merchants Warehouse Co. (Webb Warehouse). Merchants Warehouse Co. (River Front Stores and Webb Warehouse) are within the jurisdiction of Dock Street Station, but are deliveries separate and distinct from Dock St. Station, and shipments in carloads and less than carloads can be handled at these warehouses.	Sup. #32, PRR GO-ICC, 10000, 11-1-22.
	Includes all facilities of the Quaker City Cold Storage Company (Spruce St. Stores) for the handling of inbound carload and less than carload shipments of dairy freight, viz.: butter, cheese, eggs and dressed poultry. The Quaker City Cold Storage Co. (Spruce St. Stores) is under the jurisdiction of Dock St. Station, but is a delivery separate and distinct from Dock St. Station.	
1040	Federal Street Station	
	Includes all facilities of Merchants Warehouse Co. Nos. 7 and 8, Merchants Warehouse Co. No. 7 is under the jurisdiction of Federal St. Sta. and occupies the upper floors of the inbound freight house. Merchants Warehouse Co. No. 8 is under the jurisdiction of Federal St. Sta., but has a delivery separate and distinct from Federal St. Sta. and shipments in carloads and less than carloads can be handled at this warehouse.	Sup. #37, PRR GO-ICC 7000, 4-1-19. PRR GO-ICC 10000, 11-1-19.
7001	Broad & Washington Ave.	Sup. #2, PRR GO-ICC 40[illegible], 10-1-11. PRR GO-ICC 3800, 4-12-12. PRR GO-ICC 7000, 10-15-15.
	Includes all facilities of Merchants Warehouse Co. No. 1 (Flour).	

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7001	Change	
	Includes all facilities of Merchants Warehouse Co. No. 1 (Flour). Merchants Warehouse Co. No. 1 is under the jurisdiction of Broad & Washington Ave. Station, but has a delivery separate and distinct from Broad & Washington Ave.	- Sup. #21, PRR GO-ICC 7000, 12-1-17. PRR GO-ICC 10000, 11-1-19.

Station No.	Station	Issue
7404	31st & Chestnut Sts. Includes all facilities of Merchants Warehouse Co. No. 2.	Sup. 242, PRR GO-ICC 402, 10-1-11. PRR GO-ICC 38000, 4-12-12. PRR GO-ICC 7000, 10-15-15. PRR GO-ICC 10000, 11-1-19.

7-11-28.
HLR-s.

[fol. 970] Extracts from P. R. R., G. O., I. C. C. 14700—List of Stations and Agencies on P. R. R.

Current Tariff

Station No.	Station
365	Kensington (Philadelphia) Pa. Includes all facilities of Merchants' Warehouse Co. No. 3 as an additional point of receipt and delivery of freight.
369	Shackamaxon (Philadelphia) Pa. Includes the facilities of Merchants' Warehouse Co. No. 4 as an additional point of receipt and delivery of freight.
1034	Dock St., Philadelphia, Pa. Includes the facilities of Merchants' Warehouse Co. Nos. 5 and 6 (River Front Stores), and Merchants' Warehouse Co. (Webb Warehouses), as additional points of receipt and delivery of carload and less carload freight. Includes the facilities of the Quaker City Cold Storage Company (Spruce Street Stores) as an additional point of receipt and delivery of inbound carload and less carload shipments of dairy freight, viz: Butter, Cheese, Eggs and Dressed Poultry.
1040	Federal Street, Philadelphia, Pa. Includes the facilities of Merchants' Warehouse Co. No. 7 as an additional point of receipt of inbound freight. Merchants' Warehouse Co. No. 7 occupies the upper floors of the inbound freight house. Includes the facilities of the Merchants' Warehouse Co. (Front & Bainbridge Streets) as an additional point of receipt and delivery of freight.
7001	Broad Street and Washington Avenue, Philadelphia, Pa. Includes the facilities of Merchants' Warehouse Co. No. 1 as an additional point of receipt and delivery of freight.
7404	31st & Chestnut Streets, West Philadelphia, Pa. Includes all facilities of Merchants' Warehouse No. 2.

T. J. B. 7-18-28.

[fol. 971]

EXHIBIT No. 60

Witness: —— ——

I. C. C. Docket No. 20968

JAMES GALLAGHER ET AL.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Extract from Pennsylvania Railroad Tariff G.O.-I.C.C. No. 14322, Terminal Arrangements at Camden, N. J., and Philadelphia, Pa.

Rule 32. Warehouses Considered Freight Stations During Free Time.—In the application of Storage Rules and Charges as published in Agent B. T. Jones' I. C. C. No. 1491, P. S. C. R. No. 86 (Agent's Index No. 54), supplements thereto or reissues thereof, the following warehouses in Philadelphia, Pa., are considered freight stations during the free time:

Name of warehouse	Street address	Station number	Station jurisdiction
Merchants' Warehouse Company (River Front Stores)	Delaware Avenue and Chestnut Street	1034	Dock Street
Merchants' Warehouse Company (Webb Warehouse)	Delaware Avenue and Walnut Street	1034	Dock Street
Merchants' Warehouse Company	15th and Carpenter Streets	7001	Broad Street and Washington Ave.
Merchants' Warehouse Company	Beach Street above Laurel Street	369	Shackamaxon
Merchants' Warehouse Company	31st and Chestnut Streets	7404	31st and Chestnut Sts.
Merchants' Warehouse Company	Front and Berks Streets	365	Kensington.
Merchants' Warehouse Company	Front and Federal Streets	1040	Federal Street.
Merchants' Warehouse Company	Front and Bainbridge Streets	1040	Federal Street.
Merchants' Warehouse Company	Front and Kenilworth Streets	1037	Washington Avenue Wharf.
Pennsylvania Cold Storage and Market Company	29th and Market Streets	1077	Arrangement discontinued.
Philadelphia Tidewater Terminal	Foot and Oregon Streets	1037	Washington
Quaker City Cold Storage Company	Delaware Avenue and Spruce Street	1034	Avenue Wharf. Dock Street.

10-5-28. EF-s.

[fol. 972]

EXHIBIT No. 61

Witness: ——

I. C. C. Docket No. 20968

JAMES GALLAGHER et al.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

Extract from Pennsylvania Railroad Tariff G. O.-I. C. C. No. 14370- Exceptions to Official Classification

Exceptions to Rule 27

At Philadelphia, Pa.:

Package freight (see note) carried at carload rates will be loaded or unloaded by the carriers at the stations in Philadelphia specified below, except when handled direct to or from cars on team tracks at owner's request.

Vine Street, Walnut Street Wharf, Dock Street, Federal Street, Broad Street and Washington Avenue, Pennsylvania Produce Terminal, 30th and Market Streets, Shackamaxon, Kensington, Ontario Street, Fair Hill, North Philadelphia proper (not to include Diamond Street Yard or 12th Street Yard).

NOTE.—The term package freight does not include Automobiles and other Motor Vehicles.

Hay carried at carload rates will be loaded or unloaded by the carrier at the Hay Warehouses in Philadelphia, Pa., enumerated in G. O.-I. C. C. No. 14322, G. O.-P. S. C.-Pa.-No. 4813 (Agent's Index No. 17), supplements thereto or reissues thereof.

10-5-28.
EF-s.

[fol. 973]

EXHIBIT No. 62

Witness: —— ——

JAMES GALLAGHER ET AL.

vs.

THE PENNSYLVANIA RAILROAD COMPANY

I. C. C. Docket No. 20968

Historical Statement Showing Allowances to Warehouse Companies as Published in Pennsylvania Railroad Tariffs On and After December 1, 1912

Allowances: Merchants Warehouse Co.

Warehouse	Commodity and rate	Tariff reference
Delaware Ave., Water, Chestnut & Gatzmer, and 15th & Carpenter Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel On Flour, Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 40¢ per 2000 lbs.	PRR GO-ICC 4144, Eff. 12-1-12.
31st & Chestnut Sts., Beach and Laurel, and Front & Berks Sts.	All freight..... 35¢ per 2000 lbs.	PRR GO-ICC 4144, Eff. 12-1-12.
15th & Carpenter Sts.....	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel On Flour, Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 35¢ per 2000 lbs.	Sup. 10, PRR GO-ICC 4144, Eff. 12-1-16.
Delaware Ave., Water, Chestnut and Walnut Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 40¢ per 2000 lbs.	Sup. 10, PRR GO-ICC 4144, Eff. 12-1-16.
Federal St. Added, 31st & Chestnut Sts., Front & Berks Sts., Beach and Laurel Sts., and Federal St.	All freight..... 35¢ per 2000 lbs.	Sup. 11, PRR GO-ICC 4144, Eff. 1-1-17.

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Delaware Ave., Water, Chestnut & Walnut Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 40¢ per 2000 lbs.	PRR GO-ICC 8340, Eff. 4-20-18.
31st & Chestnut Sts., Front & Berks Sts., Beach and Laurel Sts,. and Federal St.	All freight..... 35¢ per 2000 lbs.	PRR GO-ICC 8340, Eff. 4-20-18.
15th & Carpenter Sts.....	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 35¢ per 2000 lbs.	PRR GO-ICC 8340, Eff. 4-20-18.
Delaware Ave., Water, Chestnut and Walnut Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 50¢ per 2000 lbs.	Sup. 7, PRR GO-ICC 8340, Eff. 6-23-19.

[fol. 974] Warehouse	Commodity and rate	Tariff reference
31st & Chestnut Sts., Front and Berks Sts., Beach and Laurel Sts., and Federal St.	All freight..... 50¢ per 2000 lbs.	Sup. 7, PRR GO-ICC 8340, Eff. 6-23-19.
15th & Carpenter Sts.....	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 50¢ per 2000 lbs.	Sup. 7, PRR GO-ICC 8340, Eff. 6-23-19.
Delaware Ave., Water, Chestnut & Water Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 50¢ per 2000 lbs.	PRR GO-ICC 11688, Eff. 7-1-21.
31st & Chestnut Sts., Front & Berks Sts., Beach and Laurel Sts., and Federal St.	All freight..... 50¢ per 2000 lbs.	PRR GO-ICC 11688, Eff. 7-1-21.
15th & Carpenter Sts.....	On Flour. 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 50¢ per 2000 lbs.	PRR GO-ICC 11688, Eff. 7-1-21.

EXHIBIT No. 62—Continued

Warehouse	Commodity and rate	Tariff reference
Delaware Ave. & South St...	All freight..... 35¢ per 2000 lbs.	PRR GO-ICC 11688, Eff. 7-1-21.
Delaware Ave. & South St...	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 35¢ per 2000 lbs.	Sup. 3, PRR GO-ICC 11688, Eff. 5-10-22.
Delaware Ave. & South St. and Front & Bainbridge St.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 35¢ per 2000 lbs.	Sup. 4, PRR GO-ICC 11688, Eff. 6-17-22.
Delaware Ave. & South St....	Cancelled	Sup. 11, PRR GO-ICC 11688, 6-1-23.
Front & Bainbridge Sts.....	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel All other merchandise..... 35¢ per 2000 lbs.	Sup. 12, PRR GO-ICC 11688, Eff. 7-1-23.
Delaware Ave., Water, Chestnut & Walnut Sts.	On Flour, 50,000 barrels or less, handled in one month. 3½¢ per barrel Do. Over 50,000 barrels, handled in one month. 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	Sup. 12, PRR GO-ICC 11688. Eff. 6-25-23.

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15th & Carpenter Sts.....	On Flour in barrels, 50,000 barrels or less, handled in one month..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	Sup. 12, PRR GO-ICC 11688, Eff. 6-25-23.

Delaware Ave., Water, Chestnut & Walnut Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 13640, Eff. 10-15-23.
15th & Carpenter Sts.....	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 13640, Eff. 10-15-23.
Front & Bainbridge Sts.....	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	PRR GO-ICC 13640, Eff. 10-15-23.
31st & Chestnut Sts., Front & Berks Sts., Beach and Laurel Sts. and Federal St.	All freight ..... 50¢ per 2000 lbs.	PRR GO-ICC 13640, Eff. 10-15-23.
Bainbridge, Front, Kenilworth and Penn Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	Sup. 8, PRR GO-ICC 13640, Eff. 3-23-25.
Delaware Ave., Water, Chestnut and Walnut Sts.	On Flour in barrels, 50,000 barrels or less, handled. in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 14358, Eff. 11-1-25.

EXHIBIT No. 62—Continued

Warehouse	Commodity and rate	Tariff reference
15th & Carpenter Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 14358, Eff. 11-1-25.
31st & Chestnut Sts., Front and Berks Sts., Beach and Laurel Sts. and Federal St.	All freight ..... 50¢ per 2000 lbs.	PRR GO-ICC 14358, Eff. 11-1-25.
Front & Bainbridge Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	PRR GO-ICC 14358, Eff. 11-1-25.

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Bainbridge, Front, Kenilworth and Penn Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	PRR GO-ICC 14358, Eff. 11-1-25.
Delaware Ave., Water, Chestnut and Walnut Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 14400, Eff. 2-20-26. (Present tariff)

15th & Carpenter Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	PRR GO-ICC 14400, Eff. 2-20-26.
31st & Chestnut Sts., Front & Berks Sts., Beach and Laurel Sts. and Federal St.	All freight ..... 50¢ per 2000 lbs.	PRR GO-ICC 14400, Eff. 2-20-26.
Front & Bainbridge Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	PRR GO-ICC 14400, Eff. 2-20-26.
Bainbridge, Front, Kenilworth and Penn Sts.	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 35¢ per 2000 lbs.	PRR GO-ICC 14400, Eff. 2-20-26.

NOTE.—The following note added under all above allowances, Supplement 5, PRR Tariff GO-ICC 8340, Eff. 7-5-19:

"No payment will be made on inbound and outbound traffic stored in transit."

NOTE.—The following note added under all above allowances: Supplement 9, PRR Tariff GO-ICC 13640, Eff. 4-23-25:

"No payment will be made on inbound or outbound traffic, milled, mixed, malted or stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania."

NOTE.—The following note added under all above allowances: PRR Tariff GO-ICC 14400, Eff. 2-20-26:

"No payment will be made on inbound or outbound traffic, milled, mixed, malted or stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company."

EXHIBIT No. 62—Continued

Warehouse	Commodity and rate	Tariff reference
Delaware Avenue, Bainbridge Street, Water Street and Kenilworth Street (*)	On Flour in barrels, 50,000 barrels or less, handled in one month ..... 3½¢ per barrel On Flour in barrels, Over 50,000 barrels, handled in one month ..... 2½¢ per barrel On Flour, other than in barrels, and all other merchandise ..... 50¢ per 2000 lbs.	Sup. 2, PRR GO-ICC 14400, Eff. 9-1-27.

No payment will be made on inbound or outbound traffic, milled, mixed, malted or stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

(*) Changed to "Delaware Avenue, Bainbridge Street, Penn Street and Kenilworth Street": Supplement 3, PRR Tariff GO-ICC 14400, Eff. 1-5-28.

[fol. 977]

The Quaker City Cold Storage Co.

Warehouse	Commodity and rate	Tariff reference
Spruce St. stores	On inbound less than carload shipments of Butter, Cheese, Eggs and Dressed Poultry ..... 50¢ per 2000 lbs. On inbound carload shipments of Butter, Cheese, Eggs and Dressed Poultry ..... 50¢ per 2000 lbs.	Sup. 7 PRR GO-ICC 11688, Eff. 10-1-22.
Spruce St. stores	Same as above	PRR GO-ICC 13640, Eff. 10-15-23.
Spruce St. stores	Same as above	PRR GO-ICC 14358, Eff. 11-1-25.
Spruce St. stores	Same as above, with following addition: "No allowance will be made on traffic consigned to or by these storage companies."	PRR GO-ICC 14400, Eff. 2-20-26. (Present Tariff.)
Spruce St. stores 5-29-28. HLR-s.	Same as in Supplement No. 7, PRR GO-ICC 11688, except the addition of the following note: "No payment will be made on inbound or outbound traffic stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the Quaker City Cold Storage Company."	Sup. 5, PRR GO-ICC 14400, Eff. 5-15-28.

[fol. 978] EXHIBIT No. 63

Witness: —— ——

I. C. C. Docket No. 20968

JAMES GALLAGHER et al.

vs.

THE P. R. R. Co.

United States Railroad Administration, Director General of Railroads

Pennsylvania Railroad, Eastern Lines; West Jersey & Seashore Railroad; New York, Philadelphia & Norfolk Railroad; Huntingdon & Broad Top Mountain Railroad.

Office of Freight Traffic Manager.

Elisha Lee 5-29-19, etc. Increase in loading and unloading allowance to Merchants' Warehouse Co., from 35 to 50 cents per ton.

Philadelphia, May 29, 1919.

Referred to

Mr. J. L. Eysmans, General Freight Agent:

Will you please arrange for prompt changes in the tariffs, as directed by Mr. Markham in letter to Mr. Lee, under date 26th instant, copy attached, the present allowance of 35¢ to be increased to 50¢, to become effective as soon as tariffs can be duly authorized and published.

This represents an increase of 42.9%, and based upon 1918 allowances an additional amount of $39,500.00 per annum.

G. D. Ogden, Freight Traffic Manager.

[fol. 979] Philadelphia, May 29, 1919.

Subject: Increase in loading and unloading allowance to Merchants' Warehouse Co., from 35 to 50 cents per ton. C. H. M. 5-26.

Respectfully referred to Mr. G. D. Ogden, Freight Traffic Manager, for the necessary arrangements.

(Signed) Elisha Lee, Federal Manager.

Copy.

[fol. 980] United States Railroad Administration

Allegheny Region

C. H. Markham, Regional Director

Broad Street Station, Philadelphia

May 26th, 1919.

Unloading Allowances to Merchants' Warehouse Company, Philadelphia.

Mr. Elisha Lee, Federal Manager P. R. R., etc., Philadelphia.

DEAR SIR: I enclose copy of my letter of this date to Mr. Chambers, respecting allowances to the Merchants' Warehouse Company.

Please arrange for prompt changes in your tariffs in accordance therewith.

Yours truly, (Signed) C. H. Markham, Regional Director.

Copy.

[fol. 981] United States Railroad Administration

Allegheny Region

C. H. Markham, Regional Director

Broad Street Station, Philadelphia

May 26th, 1919.

Unloading allowances to Merchants' Warehouse Company, Philadelphia.

Mr. Edward Chambers, Director Division of Traffic, Washington, D. C.

DEAR SIR: Attached is a copy of Section 5 of contract between the Pennsylvania Railroad Company and the Merchants' Warehouse Company.

In accordance therewith, the Merchants' Warehouse Company, under date of January 28th, 1919, served formal notice upon the Pennsylvania Railroad Company, the Re-

gional Director and Federal Manager Lee. A copy of one of these notices is enclosed herewith.

After consultation with Mr. Geo. Stuart Patterson, counsel of the Pennsylvania Railroad, it was decided to advise the Merchants' Warehouse Company that the Administration would not arbitrate the question, but would discuss with it the proper adjustment of the matter. After several conferences, it has been agreed to increase the 35¢ loading and unloading allowance to 50¢ per net ton, same to become effective as soon as tariffs can be issued, the question of retroactiveness to be left for further consideration. The Pennsylvania Railroad has been instructed to revise its tariffs accordingly.

In view of the unusual nature of this contract and the fact that it is costing the railroads from 60¢ to 64¢ per ton to perform exactly the same service at Cupples Station, St. Louis, I am sure you will find this adjustment of the matter satisfactory.

Yours truly, —— ——, Regional Director.

Copy.

[fol. 982]

EXHIBIT No. 64

Witness: —— ——

I. C. C. Docket No. 20968

JAMES GALLAGHER et al.

vs.

THE P. R. R. Co.

T. B. Form No. 3

United States Railroad Administration

Director General of Railroads

Eastern Freight Traffic Committee, 143 Liberty Street, New York City.

June 16th, 1919.

Advice No. N. Y. 112-B.

Mr. J. L. Eysmans, G. F. A., P. R. R., Philadelphia, Pa.:

In accordance with Freight Rate Authority No. 9199 of June 13th, 1919, please arrange for the publication of the

following effective at the earliest possible date on one day's notice:

Change allowance to the Merchants Warehouse Company, Philadelphia, Pa., as shown in Items 4 (b), (c), (d) and (e) of Pennsylvania Railroad Tariff, GO-I. C. C. No. 8340 on Merchandise Freight, to read 50¢ per 2000 pounds, as shown in Exhibit "A" attached to Application No. 950 of Philadelphia District Freight Traffic Committee.

Exhibit "A" consists of copy of Pennsylvania Railroad Tariff, GO-I. C. C. No. 8340.

Return attached copy of this Advice to F. S. Davis, Tariff Publishing Agent, with reference to tariff or supplement in which changes authorized will be published.

B. Campbell, Chairman.

Correspondence concerning this communication should be addressed to F. S. Davis, Tariff Publishing Agent, 143 Liberty Street, New York—direct.

[fol. 983] EXHIBIT No. 82

Witness: Gheen

I. C. C. Docket No. 20968, Sub. No. 2

REX AND COMPANY, INC., et al.,

vs.

READING COMPANY

Excerpt from Consolidated Freight Classification No. 5

(Agent D. T. Lawrence's I. C. C. O. C. No. 49.)
(Agent R. C. Fyfe's I. C. C. No. 18.)
(Agent E. H. Dulaney's I. C. C. No. 23.)

"Rule 27, Section 1.—Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings."

Excerpt from Reading Company's Exceptions to Official Classification Supplement No. 48 to I. C. C. No. 189

"Item No. 625B—Exception to Rule 27 of Official Classification.—The following exception to Section 1 of Rule

27 of Official Classification will apply to Philadelphia Stations as specified below. Package freight (see Note) carried at carload rates will be loaded and unloaded by the Reading Company, except when handled direct to or from cars on team tracks at owner's request.

Willow and Noble Sts., Chestnut St. Pier 8, South, Catharine St., Coral St. Yard, Port Richmond, Lehigh Avenue, Second and Berks Sts., 12th and York Sts., 20th and Hamilton Sts., 23rd and Arch Sts., Broad and Callowhill Sts., The Philadelphia Perishable Products Terminal.

NOTE.—The term "package freight" does not include automobiles and other motor vehicles."

[fol. 984] EXHIBIT No. 83

Witness: —— ——

I. C. C. Docket No. 20968, Sub. No. 2

REX AND COMPANY, INC., et al.

vs.

READING COMPANY

Philadelphia & Reading Railway Co., General Freight Department, Reading Terminal

Philadelphia, Jany. 31st, 1908.

Mr. M. E. Levering, Treas. & Gen'l. Supt. P., W. & S. D. Co., 113 So. 3rd St., Philada.

DEAR SIR: In regard to agreement existing between our Company and the Penna. Warehousing & Safe Deposit Company, executed December, 1901, and having reference to Clause No. 2, wherein the Railway Company agrees to deliver to you for storage and warehousing, Flour, etc., and referring to Clause 3, where our Company agrees to a terminal allowance for the facilities so afforded by you, an amount equal to 30 cents per ton, net or gross, according to classification; I find for some time past, and at present, that

our company has been delivering to you for unloading, storage, etc., large shipments of printing paper in rolls, and paying you the amount refered to, 30 cents per ton, net or gross.

In respect to this particular commodity I beg to advise you that effective from March 1st, 1908, we will pay you 15 [fol. 985] cents per ton, instead of 30 cents per ton as heretofore.

Kindly notify me of the acceptance of this modification by your Company, with the understanding that the subject shall be covered later on by a formal modification of our contract to be executed under the corporate seals of our respective companies.

Yours truly, (Signed) B. H. Bail, G. F. A.

[fol. 986] EXHIBIT No. 85

Witness: Settle

Extract from Exceptions to Official Classification, B. & O. R. R. Tariff I. C. C. No. 21250, Item 5370

Rule 27 to Official Classification—Exceptions to at Philadelphia, Pa.—Package freight (see Note) carried at carload rates will be loaded and unloaded by The Baltimore and Ohio Railroad Company at stations in Philadelphia, Pa., specified below, except when handled direct to or from cars on team tracks at owner's request:

The Philadelphia,	Pier 40, North,	Pier 62, South,
Perishable Products,	Pier 12, North,	Pier 22, South,
Terminal,	Pier 24, South,	Pier 78, South.

Bulk freight, in carload lots, discharged from ship docked at any of the above Philadelphia pier stations, will be loaded into cars at the expense of the Baltimore and Ohio Railroad Company.

NOTE.—The term "Package freight" does not include automobiles and other motor vehicles. Official Classification will apply on automobiles and other motor vehicles.

Extract from B. & O. R. R. Tariff I. C. C. No. 21275, Covering "Facilities for Receipt and Delivery of Property"

Regular Philadelphia Deliveries

Carload freight handled at Pennsylvania Warehousing & Safe Deposit Company:

Delaware Avenue Stores,
Morro Phillips Stores,
23rd Street Stores,
Tobacco Warehouses,

will be subject to the same rules and regulations as to loading and unloading as in effect at Pier 62, South Philadelphia, Pa., per B. & O. R. R. I. C. C. Nos. 20570 and 21212.

[fol. 987] 491

B. & O. Exhibit No. 86

Agreement Between the Pennsylvania Warehousing and Safe Deposit Company, the Tradesmen's Grain, Elevator and Storage Company, the Baltimore and Ohio Railroad Company, and John K. Cowen and Oscar G. Murray, Receivers, April 10, 1897, Relative to Purchase and Improvement, by the Warehouse Company, of Certain Philadelphia Property Formerly Owned by the Elevator Company, Terminal Allowance to Warehouse Company, etc.

Supplementary Agreement Between the Pennsylvania Warehousing and Safe Deposit Company, and the Baltimore and Ohio Railroad Company, March 31, 1902, Fixing the Cost at which B. & O. R. R. Is to Take Over the Warehouse Property at 23rd and Race Streets, Philadelphia, upon Expiration of Agreement of April 10, 1897

Agreement Between the Pennsylvania Warehousing and Safe Deposit Company, the Baltimore and Ohio Railroad Company, the Baltimore and Philadelphia Railroad Company, and the Schuylkill River East Side Railroad Company, August 22, 1904, Relative to Restoration of Warehouse Buildings at Philadelphia Destroyed by Fire. Increase in Guaranteed Tonnage

Office of the Secretary, B. & O. R. R. Co., Baltimore, Md.

Agreement

Date and Parties

Memorandum of agreement entered into this 10th day of April, A. D. 1897, by and between The Pennsylvania Warehousing & Safe Deposit Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, hereinafter called "Warehouse Company", party of the first part, The Tradesman's Grain Elevator & Storage Company, a corporation organized under the laws of said commonwealth, hereinafter called "Elevator Company", party of the second part, and The Baltimore & Ohio Railroad Company, a corporation organized under the laws of the State of Maryland, and John K. Cowen and Oscar G. Murray, Receivers of the said Baltimore & Ohio Railroad Company, duly appointed under the decree of the United States Circuit Court of the Fourth Circuit at Baltimore, Maryland, on the 29th day of February, 1896, together with The Baltimore & Philadelphia Railroad Company, a corporation organized under the laws of the States of Delaware and Pennsylvania, and duly merged into one corporation, under the laws of merger of said States, for themselves and as lessees of the Schuylkill River East Side Railroad Company, and The Schulykill River East Side Railroad Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, hereinafter called "Railroad Companies", parties of the third part.

Description of Elevator Co.'s Property

Whereas, The said Elevator Company is the owner of a certain lot or piece of ground with the buildings and improvements thereon erected, located in the City of Philadelphia, and situate on the west side of Twenty-third street [fol. 989] at the distance of 143 feet 4 inches northward from the north side of Race street in the City of Philadelphia. Containing in front or breadth on the said Twenty-third street 75 feet, and extending of that width westward in length or depth about 215 feet to a certain 40 feet wide street called St. David street, bounded northward by ground formerly of Harry K. Cummings, and now of the said Ele-

vator Company, being the premises next described, eastward by the said Twenty-third street, southward by ground formerly of Samuel Smyth, and westward by St. David street aforesaid.

And all that certain lot or piece of ground with the brick buildings thereon erected, situate on the west side of Twenty-third street at the distance of 218 feet 4 inches northward from the north side of Race street in the Tenth ward of the City of Philadelphia aforesaid. Containing in front or breadth on said Twenty-third street 75 feet, and extending of that width westward in length or depth 215 feet more or less to St. David street, bounded northward by ground formerly of Mary Cuthbert, eastward by said Twenty-third street, southward by the first described lot, and westward by St. David street, the said two lots being subject to the lien of a certain mortgage debt, the principal whereof amounts to the sum of fifty thousand dollars ($50,000).

Sale of Property to Warehouse Co.—Construction of Warehouse and Other Improvements

And whereas, at the request of the said Railroad Companies, parties of the third part, the said Elevator Company, party of the second part, has agreed to sell the said lots of ground with the buildings now thereon erected, and appurtenances to the said Warehouse Company, party of the first part, for the price or sum of seventy thousand dollars ($70,000) subject to the said mortgage debt of fifty thousand dollars ($50,000) aforesaid, and at the instance and request of the said Railroad Companies, parties of the third part, the said Warehouse Company, party of the first part, has agreed to purchase the same for the price above mentioned, and erect thereon or upon the northernmost lot thereof a new warehouse with modern improvements, for the rapid and economical handling and storage of railroad [fol. 990] freights, of a size and capacity as shown by the drawings and specifications thereof agreed to by the parties as evidenced by the signatures of the President of the said Warehouse Company, and the Receivers of said Baltimore & Ohio Railroad Company, and on file in their respective offices at a cost not to exceed the sum of ninety thousand dollars ($90,000).

Terminal Charge, Minimum Tonnage

And whereas, for the mutual advantage of the parties hereto, the said Railroad Companies, in consideration of the premises, and of the free storage, for a period of ten days, of freight and goods and merchandise delivered by said Railroad Companies to the present Warehouse, and to the same as enlarged as herein provided, and the free handling of the same by the said Warehouse Company, with free insurance of said freight and goods and merchandise so delivered for said period, are ready to engage to pay to the said Warehouse Company a terminal charge of 35 cents per ton upon all freight received from said Railroads over their track connections with said Warehouses not including freight switched from other railroads within the limits of the City of Philadelphia, and to stipulate that the same shall not in any one year, during the existence of this contract, fall below a minimum of 70,000 tons.

Now this agreement witnesseth:

Purchase of Property by Warehouse Co., Cost of

First. That the Warehouse Company, party of the first part, for and in consideration of the sum of One Dollar to it in hand paid, the receipt whereof is hereby acknowledged, agrees to purchase from the Elevator Company, party of the second part, the premises first hereinabove described together with all of the appurtenances, for the price or sum of seventy thousand dollars ($70,000,) subject to the lien of a mortgage debt, the principal of which is the sum of fifty thousand dollars ($50,000,) payment of which is assumed by the Warehouse Company, and the Elevator Company, party of the second part, agrees to sell and convey to the said Warehouse Company, party of the first part, the premises [fol. 991] named, for the price hereinbefore mentioned and stipulated, subject only to the lien of the mortgage aforesaid.

Construction of Warehouse and Other Improvements, Cost of

Second. For and in consideration of the sum of One Dollar ($1.00) and the premises the Warehouse Company,

party of the first part, hereby covenants and agrees with the Railroad Companies, parties of the third part, that upon the conveyance to it of the said premises, and the vesting of title in it, to the same, by the said Elevator Company, the party of the second part, that it, the Warehouse Company, party of the first part, will forthwith proceed to erect upon the northernmost lot of the said premises described, a Storage Warehouse of a size and capacity as shown by the drawings and specifications thereof agreed to by the parties as evidenced by the signatures of the Presidents of the said Warehouse Company, and of the said Baltimore and Ohio Railroad Company, and on file in their respective offices. The amount to be expended upon the same is estimated not to exceed ninety thousand dollars ($90,000) the Warehouse Company being at liberty to construct the same for a less amount, provided the same can be done without sacrificing the storage capacity of the building, or the strength efficiency and of the structure and its machinery, or departure from the plans and specifications above mentioned. As proper item of said cost it is agreed shall be interest at 6% per annum upon such monies as may from time to time be paid out by Warehouse Company on account of construction of said warehouse and calculated to the date of completion.

Track Connections—Freight to be Stored, Minimum Amount Yearly—Warehouse Co. Appointed Agent of R. R. Co.

Third. In further consideration of the mutual benefits and advantages to accrue from the operation of said Warehouse, it is covenanted and agreed between the Warehouse Company, party of the first part, and the Railroad Companies, parties of the third part, as follows: Each of the said parties covenanting as well for itself as for its respective successors, the Railroad Companies, parties of the third part, covenant and agree that the track connections [fol. 992] already existing across St. David street into the property aforesaid, connecting the said property with the Railway of the Schuylkill River East Side Railroad Company shall remain and be maintained during the term of this agreement, and that the Railroad Companies will deliver to the Warehouse Company during said term for storage and warehousing (but only so far as under existing

contracts, they may be able so to do), all local flour and general merchandise, which can be controlled by them, and destined for any points in Philadelphia, west of Broad street, to the extent of not less than 70,000 tons per annum, and the said Railroad Companies, parties of the third part, agree to constitute and appoint said Warehouse Company, party of the first part, their agent for all freight delivered to said Warehouse Company, by said Railroad Companies, the agency thus to be created being understood by both parties hereto to extend merely to the delivery of consignments from said Railroad Companies, and the collection of freight charges due to said Railroad Companies thereon, and it is not to be construed so as to relieve the Warehouse Company from any responsibility for any claims for loss or damage which may arise by reason of the acts or omissions of said Warehouse Company.

Terminal Allowance, Minimum Amount Yearly—Payable Monthly—Free Period

Fourth. The Railroad Companies further agree to pay to said Warehouse Company, as a terminal allowance for the facilities to be afforded (that is to say for the receiving and handling and ten days' storage and insurance, of the consignments delivered to said Warehouse Company) the sum of 35 cents per net ton of 2,000 pounds, for each and every ton of freight received, handled and stored by said Warehouse Company, and delivered to it by said Railroad Companies, until the total of the sums so paid in each year of the operation of this agreement shall aggregate the amount of twenty-four thousand five hundred dollars ($24,500,) and to make payments of said amounts per ton monthly, on or before the 15th day of each month, for the operations of the preceding month, it being understood and agreed that the total sum to be paid by the Railroad Com- [fol. 993] panies to the Warehouse Company, under this agreement, shall not in any event be less than twenty-four thousand five hundred dollars ($24,500) per year, it being the true intent and meaning of this agreement, and so understood by all parties hereto, that the Warehouse Company shall be assured of sufficient tonnage at the rate aforesaid, to produce for it at least the amount of twenty-four thousand five hundred dollars ($24,500) per year, and that

after said revenue has been produced, the Warehouse Company shall and will receive, handle and store all freight and goods and general merchandise delivered to it by the Railroad Companies, for said storage period of ten days, with insurance, free of charge, to said Railroad Companies for such service, excepting only the actual expense to the Warehouse Company, such as labor, etc., of receiving and handling and storing the same. It is also understood and agreed that the said stipulated sum of 35 cents per ton shall not be payable upon any tonnage that is merely switched over the Schuylkill River East Side Railroad, from its connection with the Philadelphia & Reading Railway, or from other lines; with the option, however, to the Warehouse Company, to refuse or to take such freight upon the written consent or request of the said Railroad Companies, parties of the third part.

Repair and Maintenance of Tracks—Delivery of Cars—Maintenance of Warehouse and Improvements—Cars Unloaded Free

Fifth. The Railroad Companies covenant and agree that they shall and will provide and keep in repair the two railroad tracks now crossing St. David Street to the western end of the Warehouse property, with suitable connections with the railroad of the Schuylkill River East Side Railroad Company, as may be required for the prompt and convenient transfer of cars to and from said Warehouse and Railroad, and shall and will, with all reasonable dispatch, deliver all cars arriving at and destined for the said Warehouse, which said Warehouse shall receive and accommodate; and the Railroad Companies shall promptly remove from the same all cars when unloaded, or reloaded with return freights. The Warehouse Company covenants and [fol. 994] agrees to keep up and maintain at its own expense, the said Warehouse and its appurtenances in good condition, repair and working order, rebuilding and restoring the same whenever it may become necessary so to do, and to maintain at all times sufficient labor and appliances to promptly and expeditiously handle, store and receive and deliver all such merchandise and freight to the full capacity of said Warehouse in the manner as contemplated by this agreement, and to unload all cars, free of expense to

the Railroad Company, except as provided in the last preceeding covenant, viz: when the total amount of traffic received from said Railroad Companies shall have exceeded 70,000 net tons.

Payment of Freight Charges—Insurance on Freight

Sixth. The Warehouse Company covenants and agrees to pay the said Railroad Companies, within 10 days after said freights are delivered by them to said Warehouse Company, all charges due upon said freights and which have accrued up to the time of such delivery, it being understood and agreed that for the amount of said charges so paid, and until the same are collected from the actual consignees or owners of said freight, or delivery of the same to it, said Warehouse Company shall be entitled to the benefits of the carrier's lien, on said freights, as possessed by the said Railroad Companies, and shall have the right and privilege of collecting the same, in the name of said Railroad Companies, to the use of the Warehouse Company, and the said Warehouse Company further covenants and agrees to keep up a floating policy of insurance sufficient to cover all property delivered to said Warehouse Company by Railroad Companies, so as to meet all claims for losses or damage to consignments while the same are in the custody of the Warehouse Company, during said period of 10 days, and to apply the insurance money so received to the payment of caid claims, if any.

Insurance on Building—Rebuilding in Case of Fire—Storage Facilities While Rebuilding

Seventh. And the said Warehouse Company further agrees to keep the building and its appliances sufficiently insured from loss by fire so that the same may be promptly [fol. 995] rebuilt in case of partial or total destruction, to the original standard of structure and appliances, which obtained at the time of such partial or total destruction. And in case of the total or partial destruction of said Warehouse by fire or otherwise, then the said Warehouse Company, party of the first part, during the period of time required for the rebuilding in whole or in part of said Warehouse shall provide for the use and accommodation of the Railroad Companies, parties of the third part, warehouse

facilities at such warehouses as it may from time to time have on south Delaware avenue, between Lombard and South streets, to the extent to which the same may be available, for the free storage and insurance of freights, goods and merchandise, offered to said Warehouse Company by said Railroad Companies, on the same terms and conditions as herein provided, for goods deliverable at the said Warehouse which may be partially or totally destroyed until said Warehouse has been in whole or in part rebuilt. And in case of the failure of the said Warehouse Coupany to provide Warehouse facilities with free storage and insurance for the periods stipulated in this contract, then the 35 cents terminal charge per net ton of 2,000 pounds and guarantee of the number of tons per year deliverable to said Warehouse shall be suspended until the Warehouse contemplated by this agreement is rebuilt and in full operation, and the said Railroad Companies shall be put to no additional expense for the handling by Warehouse Company of deliveries to said substituted warehouse, during the period of reconstruction as aforesaid.

Freight Excluded Under Insurance Rules

Eighth. It is further understood and agreed that the said Warehouse shall not be compelled to receive from the said Railroad Companies for storage under the terms of this agreement, articles or commodities which under the schedule producing the lowest rates of insurance it is forbidden to receive by the rules of the Philadelphia Fire Underwriters Association, regulating insurance upon warehouses and their contents, used for general storage purposes.

[fol. 996] Date Minimum Tonnage Clause Effective

Ninth. The stipulation herein contained, that the number of net tons of freight, goods and merchandise delivered by said Railroad Companies shall not fall below the total of 70,000 tons in each year, shall take effect upon the completion of the warehouse provided to be erected, and during the erection of said warehouse fifty per cent of the minimum payment herein provided shall be paid to the Warehouse Company for the operation of the existing warehouse.

Enlargement of Facilities

Tenth. The Warehouse Company shall be at liberty in its discretion to further enlarge its storage capacity upon the property aforesaid, by rebuilding or extending the structures upon the southernmost lot first described herein and upon the completion of said new structures, upon plans and specifications approved by the Railroad Companies, and evidenced by the signatures of the President of the Warehouse Company, and the President or Receivers of The Baltimore & Ohio Railroad Company respectively, and filed in their several offices, and the same shall be subject to the options to purchase at net cost as stipulated in paragraph 12 of this agreement; provided that arrangements satisfactory to the parties hereto can be effected for the erection of said additional warehouse.

Cost of Loading and Unloading

Eleventh. It is the understanding and agreement and so covenanted by the parties hereto that upon all freight and goods and merchandise upon which the Warehouse Company shall receive the terminal payment of 35 cents per net ton as aforesaid, the said Warehouse Company shall be at the entire expense required for unloading the same for storage or delivery or reloading the same for car shipment.

Date Contract Becomes Effective—Termination—Taking Over of Property by B. & O.

Twelfth. It is mutually understood and agreed that this contract shall take effect immediately upon its execution and delivery, and shall continue in force for thirty years, when the said Railroad Companies, parties of the third part, shall take over the land, building, fixtures, machinery, [fol. 997] apparatus, the entire plant in full repair, at its cost price, as hereinbefore provided, unless at the expiration of fifteen years from the date hereof the Railroad Companies shall exercise their option now stipulated, to terminate this contract, and take over the said property and plant at said cost price, as just stated; Provided, however, that the option to purchase given above shall not affect the right or power of the Warehouse Company to mortgage

said land and property to an amount not exceeding said cost price and bearing interest at not exceeding 5% per annum.

Receivers of B. & O. to Secure Approval of Court—If Not Secured Contract to Terminate—Annual Payment a Preferred Lien

Thirteenth. It is further mutually understood and agreed that the said Receivers shall apply to the Circuit Court of the United States for the Fourth Circuit, in the cause wherein they were appointed such Receivers, for a proper order authorizing and approving the execution of this contract by the Baltimore & Ohio Railroad Company and the said Receivers, and and the payment by Receivers from their income of the sums herein provided to be paid by the Railroad Companies, and decreeing that the obligation under this contract to pay the minimum sum of $24,500 annually to the Warehouse Company shall be and constitute a first charge and lien upon all the said Baltimore and Ohio Railroad Company's and said Receivers' interest in or claim against the said Schuylkill River East Side Railroad Company, whether by ownership of stock or otherwise, and also decreeing that said annual payment of $24,500 during the term of this contract shall also be a preferred charge upon the corpus of the estate of said Baltimore and Ohio Railroad Company and the proceeds of any sale of said Company's railroad property up to the amount coming into the hands of said Receivers from the cash payment of $70,000, to be made by the Warehouse Company under this contract, whether the Receivers obtain the same by virtue of the claims of said Railroad Company or the Receivers as creditors or as stockholders of the Tradesmen's Grain Elevator & Storage Company. Until such an order of the Court be obtained the Warehouse Company shall not be required to [fol. 998] consummate the purchase herein provided, and should the Court finally refuse to grant such an order or some order equally satisfactory to the President of the Warehouse Company, then this contract shall terminate at the expiration of 30 days from the date of the Court's action, unless within said period the Warehouse Company shall notify the other parties hereto in writing of its election to carry out this contract on its part under such order as the Court may have entered.

In witness whereof the several corporations hereinabove named have hereunto interchangeably set their corporate names by their several Presidents, and caused their common or corporate seals to be affixed, duly attested, and the said John K. Cowen and Oscar G. Murray have hereunto set their hands as Receivers, the day and year first hereinabove written.

The Pennsylvania Warehouse & Safe Deposit Company, by George H. Earle, Jr., President. Attest: C. William Funk, Secretary. (Seal.) The Tradesmen's Grain Elevator & Storage Company, by H. D. Bulkley, President. Attest: Saml. Kil-
[fol. 999] patrick, Secretary. (Seal.) The Baltimore and Ohio Railroad Company, by John K. Cowen, President. Attest: C. W. Woolford, Secretary. (Seal.) John K. Cowen, Oscar G. Murray, Receivers. Witness: Hugh L. Bond, Jr. The Baltimore & Philadelphia Railroad Co. by Thos. M. King, President. Attest: W. H. Ijams, Treasurer. (Seal.) The Schuylkill River East Side Railroad Company, by Thos. M. King, President. Attest: Theodore Frothingham, Secretary. (Seal.)

[fol. 1000] Supplementary Agreement

Memorandum of Meeting Held in Office of Mr. Oscar G. Murray, First Vice President of B. & O. R. R., Monday Morning, March 31st, 1902

Present: Mr. Oscar G. Murray, Chairman; Mr. Earle, Mr. Cook, Mr. Hale, Maj. Bulkley, Mr. Bright, Mr. King, Mr. Campbell, Mr. Galleher.

After a thorough discussion it was agreed that the cost of the construction of the 23rd and Race St. Stores, Philadelphia, after all allowances and additions are made, shall be considered and fixed at $230,599.26 as a liability of the Baltimore & Ohio R. R. Co. when it takes over the property in accordance with the terms and conditions of the agreement of April 10th, 1897; this includes the item of $1,026.13 for interest during construction, up to Nov. 1st, 1898, when it was agreed that the construction was completed.

It was further arranged that the B. & O. should send to

the Penn's Warehousing & Safe Deposit Co. a voucher to cover the following amounts:

Water rent	$9.75
Sign	226.00
Scales	215.35

as these payments were not considered part of the construction.

It was also agreed that the following items should be withdrawn:

Fire Buckets	$58.50
Elevator Spout	48.00

It was further agreed that the Penn's Warehousing Co. should repay to the Baltimore & Ohio R. R. Co. $375.00 for the year 1901 (insurance).

Oscar G. Murray, 1st V. P. Baltimore & Ohio R. R. Co. George H. Earle, Jr., Pres. Penna. W. & S. D. Co.

[fol. 1001] Agreement

Agreement of April 10, 1897

Whereas, by a certain agreement in writing dated the 10th day of April, 1897, between Pennsylvania Warehousing and Safe Deposit Company, party of the first part, The Tradesmen's Grain Elevator and Storage Company, party of the second part, and The Baltimore and Ohio Railroad Company, and John K. Cowen and Oscar G. Murray, Receivers of the said Baltimore and Ohio Railroad Company, together with the Baltimore and Philadelphia Railroad Company, for themselves and as lessees of the Schuylkill River East Side Railroad Company, and the Schuylkill River East Side Railroad Company, parties of the third part, it was provided in part that the said party of the first part should purchase certain premises at Twenty-third Street and Race Street in the City of Philadelphia, and in addition thereto, to erect certain buildings upon a portion of said premises, and

Whereas, it was further provided that said agreement should continue in force for thirty (30) years, when the

said parties of the third part should take over the entire plant at its cost price, unless at the expiration of fifteen (15) years the parties of the third part should exercise their option to terminate the said agreement, and take over the said plant at its cost price, and

Supplemental Agreement of March 31, 1902

Whereas, by a supplemental agreement under date of the thirty-first day of March, 1902, it was stipulated and agreed between the said party of the first part and the said parties of the third part that the actual cost of the entire plant was Two hundred and thirty thousand five hundred and ninety-nine dollars and twenty-six cents ($230,599.26), [fol. 1002] at which cost the parties of the third part agreed to take over the plant in accordance with the terms of the said original agreement, dated the 10th day of April, 1897, and

Buildings Destroyed by Fire

Whereas, in October, 1903, a portion of the buildings on the premises mentioned in said original agreement and supplemental agreement were destroyed by fire, and

Restoration of Buildings

Whereas, the party of the first part is willing to restore said buildings so destroyed by fire as is required in said recited agreement, but it has been requested by the parties of the third part to so change such construction as will involve an additional outlay of Twenty-two thousand dollars ($22,000) beyond the cost of such construction as is required in Paragraph seven (7) of said original agreement, and

Balance of Insurance Money Available

Whereas, the party of the first part has in hand Fifty-seven thousand six hundred and twenty-five dollars and fifty-seven cents ($57,625.57), being balance after restoring machinery not entirely destroyed by fire, collected from insurance on the buildings and machinery injured and destroyed by fire as aforesaid, and available for the purpose of re-construction as contemplated by said agreement.

Parties to the Agreement

Now, it is hereby mutually agreed between the Pennsylvania Warehousing and Safe Deposit Company, a corporation organized under the laws of the Commonwealth of Pennsylvania, hereinafter called the "Warehouse Company," party of the first part, and The Baltimore and Ohio Railroad Company, a corporation organized under the laws of the State of Maryland, the Baltimore and Philadelphia Railroad Company, a corporation organized under the laws of the States of Delaware and Pennsylvania, and duly merged into one corporation under the laws of merger of said States, for themselves and as lessees of the Schuylkill River East Side Railroad Company, a corporation organized under the laws of the Commonwealth of Penn- [fol. 1003] sylvania, and the said Schuylkill River East Side Railroad Company, hereinafter called "Railroad Companies," parties of the third part, as follows:

Warehouse Co. to Rebuild at Additional Cost of $22,000 Over Original Estimate

1. That the Warehouse Company will rebuild at Twenty-third and Race Streets in the City of Philadelphia, the buildings and machinery destroyed by fire in October, 1903, according to certain plans and specifications attached to this agreement, which rebuilding will cost the Warehouse Company Twenty-two thousand dollars ($22,000), in addition to the construction contemplated by the said original agreement dated the 10th day of April, 1897.

R. R. Cos. Request Warehouse Co. to Rebuild as Per Plans

2. The Railroad Companies hereby request the Warehouse Company to undertake and complete the restoration of the buildings and machinery so destroyed by fire according to the plans and specifications attached to this agreement, and identified by the signature of the parties hereto, and to make the said additional expenditure of Twenty-two thousand dollars ($22,000), necessary to complete the same according to said plans and specifications, and in consideration of the Warehouse Company so doing, the Railroad Companies agree.

Amount to be Paid by R. R. Cos. When They Take Over Property—Property to be Taken Over by R. R. Cos.

(a) That when the Railroad Companies take over the property in accordance with the terms and conditions of the original agreement dated April 10, 1897, they shall pay to the Warehouse Company the sum of Two hundred and fifty-two thousand five hundred and ninety-nine dollars and twenty-six cents ($252,599.26), which is made up as follows: Two hundred and thirty thousand five hundred and ninety-nine dollars and twenty-six cents ($230,599.26), being the amount agreed upon in the said supplemental agreement of the 31st day of March, 1902, and Twenty-two thousand dollars ($22,000) thereof being the additional cost of construction necessitated by this agreement in the [fol. 1004] construction of the buildings and machinery in accordance with the plans and specifications hereto attached, which payment, when so made, will be in full of the properties now known as the Twenty-third Street stores, not destroyed by fire in October, 1903, as well as all of the construction contemplated by this agreement in restoration of said portion of said Twenty-third and Race Street stores as was destroyed by fire in October, 1903.

Increase in Guaranteed Tonnage: 1000 Tons at *at* 35c. per Ton—Minimum Tonnage per Annum—Warehouse Co. Receives Increased Tonnage in Lieu of Interest on $7,000

(b) In addition to the payment of the said sum of Two hundred and fifty-two thousand five hundred and ninety-nine dollars and twenty-six cents ($252,599.26), when the Railroad Companies take over the property as aforesaid, the Railroad Companies further agree that upon the completion of said rebuilding contemplated by this agreement that the guaranteed tonnage as provided in the Fourth (4th) Paragraph of the original agreement, dated the 10th day of April, 1897, shall be increased one-thousand (1000) tons per annum, at the rate of thirty-five cents (35¢) per ton, so that the Warehouse Company shall be assured of sufficient tonnage at the rate aforesaid to produce for it at least Twenty-four thousand eight hundred and fifty dollars ($24,850.00) per annum, that is to say, Three hundred and fifty dollars ($350.00) per annum in addition to the sum of

Twenty-four thousand five hundred dollars ($24,500) per annum guaranteed in said original agreement, it being the intention of the parties that the Warehouse Company shall be entitled to receive interest at the rate of five per cent. (5%) per annum on Seven thousand dollars ($7,000) of the said Twenty-two thousand dollars ($22,000) additional costs of construction, and the additional tonnage of one thousand (1,000) tons per annum at thirty-five cents (35¢) per ton represents the interest at five per cent. (5%) per annum on the said sum of Seven thousand dollars ($7,000) and said additional tonnage shall be paid for in accordance with the terms of the original agreement as to the tonnage therein guaranteed.

[fol. 1005] If Cost of Rebuilding Less Than $79,625.57, Difference to be Deducted from Amounts to be Paid by R. R. Cos.

3. Anything herein contained to the contrary notwithstanding, it is distinctly understood and agreed that if the amount necessary to complete the re-building contemplated by this agreement shall not amount to the sum of Seventy-nine thousand six hundred and twenty-five dollars and fifty-seven cents ($79,625.57) then the difference between the said sum of Seventy-nine thousand six hundred and twenty-five dollars and fifty-seven cents ($79,625.57) and the cost of construction contemplated by this agreement shall be deducted from the said sum of Two hundred and fifty-two thousand five hundred and ninety-nine dollars and twenty-six cents ($252,599.26) and the said reduced sum shall represent the amount to be paid by the Railroad Companies when they take over the entire plant in accordance with the terms of the original agreement dated the 10th day of April, 1897, and the said difference between the said sum of Seventy-nine thousand six hundred and twenty-five dollars and fifty-seven cents ($79,625.57) and the actual cost of construction contemplated by this agreement shall be deducted from the said sum of Seven thousand dollars ($7,000) upon which the Railroad Companies hereinbefore have agreed to pay interest in the manner aforesaid, and interest in the manner aforesaid shall only be paid annually upon the said reduced sum instead of the said sum of Seven thousand dollars ($7,000) hereinbefore provided.

Lease of Portion of New Building to International Harvester Co.

4. The Railroad Companies hereby agree that the Warehouse Company may lease a portion of the new construction marked on said plans to the International Harvester Company, a corporation organized under the laws of the State of Illinois, for the term of seven years, and at such rent and upon such terms and conditions as are satisfactory to the Warehouse Company.

[fol. 1006] Tonnage Delivered to Harvester Co. to be Part of Guaranteed Tonnage

It is agreed that the tonnage delivered to the International Harvester Company upon the premises to be leased to it, shall be considered as a part of the tonnage guaranteed in the fourth paragraph of the original agreement dated April 10th, 1897.

Switching for Harvester Co.

5. The Railroad Companies agree to switch cars intended for the International Harvester Company, Lessees as aforesaid, to and from the main track of the said Baltimore and Ohio Railroad and over the track now located upon a portion of the premises to be leased to the said International Harvester Company and connecting with the said main track of the Baltimore and Ohio Railroad without extra cost for such Switching and in all respects on the same conditions as they switch cars to and from the 23rd Street Stores of the Pennsylvania Warehousing and Safe Deposit Company.

6. In all other respects than as hereinbefore mentioned, the agreement of April 10th, 1897, shall remain in full force and effect.

In witness whereof the parties hereto have caused their corporate seals to be affixed, this twenty-second day of August, 1904.

The Pennsylvania Warehousing and Safe Deposit Company, by George H. Earle, Jr., President. Attest: Wm. Rommel, Jr., Secretary. (Seal.) The Baltimore and Ohio Railroad Company, by George F. Randolph, 1st Vice-President. Attest:

[fol. 1007] C. W. Woolford, Secretary. (Seal.) The Baltimore and Philadelphia Railroad Company, by Geo. F. Randolph, President pro tem. Attest: C. W. Woolford, Secretary. (Seal.) The Schuylkill River East Side Railroad Company, by C. C. F. Bent, President. Attest: Theodore Frothingham, Secretary. (Seal.)

NOTE.—The original plans and specifications referred to in the foregoing agreement are on file in the general office of the Pennsylvania Warehousing & Safe Deposit Company identified by the signatures of the Secretaries of the Companies parties to the agreement, and blue prints thereof are filed with the Chief Engineer of the Baltimore & Ohio R. R. Co., file Nos. 7048, 7049, 7050 and 7051.

[fol. 1008] B. & O. EXHIBIT No. 87

491-A

Agreement Between Pennsylvania Warehousing & Safe Deposit Company, The Baltimore and Ohio Railroad Company, Baltimore and Philadelphia Railroad Company, and Schuylkill River East Side Railroad Company, July 1, 1911, Covering the Use of the Delaware Avenue Stores in Conjunction with the Twenty-third Street Stores, Philadelphia, Pa.; Modifying Prior Agreements, and Reducing Guaranteed Annual Tonnage and Payments

Office of the Secretary, B. & O. R. R. Co., Baltimore, Md.

[fol. 1009] Pennsylvania Warehousing and Safe Deposit Company, Philadelphia, Pa.

July 5, 1911.

William B. Linn, Esq., Real Estate Trust Building, Philadelphia.

MY DEAR MR. LINN: Replying to your favor of the 1st instant, I would advise in connection with the contract between the Baltimore & Ohio Railroad Company and our-

selves, that it is our understanding the tonnage handled at the "Delaware Avenue Stores" prior to April 10th 1912, for account of the Baltimore & Ohio Railroad Company, shall be added to the tonnage handled at the "Twenty-third Street Stores" in order to help make up the Baltimore & Ohio Railroad Company's guaranty of 71,000 tons.

Very truly yours, George H. Earle, Jr., President.

This I see was not clearly expressed; but that makes no difference where business is carried on with the fairness that you have, and we have tried, to show in these matters.

[fol. 1010] 491-A.

Agreement

Date and Parties

This agreement, made this first day of July, 1911, by and between the Pennsylvania Warehousing and Safe Deposit Company, hereinafter called the "Warehouse Company," and The Baltimore and Ohio Railroad Company and the Baltimore and Philadelphia Railroad Company and the Schuylkill River East Side Railroad Company, hereinafter called the "Railroad Companies."

Whereas, the Warehouse Company and the Railroad Companies and the Tradesmen's Grain Elevator and Storage Company and John K. Cowen and Oscar G. Murray, Receivers, made a certain agreement dated April 10th, 1897, in reference to the improvement and use of certain property on Twenty-third Street, Philadelphia, therein described and hereinafter called the "Twenty-third Street Stores," to which was added as a supplement a memorandum of a meeting held March 31st, 1902, and which agreement was modified by an agreement between the Warehouse Company and the Railroad Companies of August 22nd, 1904; and

Whereas, the Warehouse Company made a certain lease of a part of said property on Twenty-third Street to the International Harvester Company by lease dated June 25th, 1910, to which the Railroad Companies gave their assent by agreement of the same date; and

Whereas, the Warehouse Company is the owner of certain property on Delaware Avenue, hereinafter called the

"Delaware Avenue Stores," which is described as follows: [fol. 1011] All the warehouse located on the west side of Delaware Avenue and known as Nos. 402, 404, 406, 408, 410, 412, 414, 416, 418, 420, 422, 424, 426 South Delaware Avenue, extending through to South Water Street, being Nos. 403, 405, 407, 409, 411, 413, 415, 417, 419, 421, 423, 425, 427 South Water Street; and

Whereas, the Warehouse Company is the lessee of certain property on Delaware Avenue, which, for the purposes of this agreement, shall be included in the term "Delaware Avenue Stores," wherever hereinafter used, said property being generally known and located as follows:

The Moro Phillips Stores, located on the west side of Delaware Avenue at Swanson and Fitzwater Streets;

The West India Stores, Bonded, and the Atlantic Stores, Bonded, located on the west side of Delaware Avenue at Catherine and Swanson Streets; and

Whereas, it is provided in said agreement of April 10th, 1897, that said agreement should continue in force for 30 years, when the Railroad Companies should take over the entire plant at its cost price, unless, at the expiration of 15 years from the date of said agreement, the Railroad Companies should exercise their option to terminate said agreement and take over the property; and

Whereas, the Warehouse Company and the Railroad Companies have agreed upon certain modifications of said agreements.

Now this agreement witnesseth, that the Warehouse Company and the Railroad Companies do hereby agree as follows:

Use of Delaware Avenue Stores on Same Terms as 23rd St. Stores

1. It is agreed that the Delaware Avenue Stores shall be used for the receipt, storage and delivery of merchandise upon the terms and conditions set out in the agreements [fol. 1012] above recited (as hereby modified) in reference to the Twenty-third Street Stores, all of which terms and conditions, except those relating to the construction of the Twenty-third Street Stores and track connections therewith and the purchase of the property upon the termination of the agreement, shall apply to both properties alike.

Reduction in Annual Minimum Tonnage and Guaranteed Rental, Account Both "Stores"

2. It is agreed that the minimum tonnage of 71,000 tons per annum and the guaranteed payment of not less than $24,850 per annum, assured to the Warehouse Company by said agreements, are modified so that the Railroad Companies will guarantee to the Warehouse Company a total minimum tonnage of 50,000 tons per annum and a total minimum payment of $17,500 per annum for both the Twenty-third Street Stores and the Delaware Avenue Stores, in place of the guaranteed tonnage and payment aforesaid to the Twenty-third Street Stores; it being expressly understood that said guaranteed tonnage of 50,000 tons and guaranteed payment of $17,500 shall be the only guarantee as to tonnage and payment on account of both stores from the date this agreement takes effect. Except as thus modified, all the provisions of said agreements above recited shall apply to said guarantee.

Change in Date for Taking Over by B. & O. of 23rd St. Stores

3. The Railroad Companies hereby waive their right to take over the land, building, fixtures, machinery, apparatus and entire plant, on April 10th, 1912, as provided in said contract of April 10th, 1897, and it is agreed that the provisions of said contract in reference to the taking over of said property upon the termination of said contract of April 10th, 1897, shall apply in the same manner upon the termination of this supplemental contract, but only as to the Twenty-third Street Stores, which Stores shall then be taken over as is provided in said contract of April 10th, 1897, and supplemental agreements of March 31st, 1902, and August 22nd, 1904.

[fol. 1013] Period of Free Storage

4. It is agreed that the number of days of free storage and insurance shall be such as the Railroad Companies may prescribe from time to time, not exceeding 10 days.

Effective Date and Termination of Contract

5. This contract shall take effect on the first of the month succeeding the date upon which the Railroad Companies

shall secure access to said Delaware Avenue Stores by means of the Philadelphia Belt Line tracks, but not before April 10th, 1912, and shall continue in force for a period of 15 years thereafter, with the right to either the Warehouse Company or the Railroad Companies to terminate the same at the end of 10 years from the time the same takes effect upon 6 months written notice.

Termination of Lease of Moro Phillips, West India and Atlantic Stores

6. It is understood that the Moro Phillips Stores, the West India Stores, Bonded, and the Atlantic Stores, Bonded, are held under leases subject to termination, and, in the event of the termination of any of said leases by the Lessors, the obligations of the Warehouse Company as to these stores shall cease.

Termination in Event Delaware Avenue Stores Sold—Reduction in Minimum Tonnage and Payment Thereafter

It is understood that the Warehouse Company may desire to sell the warehouse, of which it is the owner, on the west side of Delaware Avenue, extending through to South Water Street, above described, and, in the event of such sale, the Warehouse Company shall have the right to terminate this agreement upon 3 months written notice so far as the same relates to all of the property called the Delaware Avenue Stores, and, thereupon, the minimum tonnage guaranteed shall be reduced to 35,000 tons per annum and the minimum payment to $12,250 per annum.

[fol. 1014] Pennsylvania Warehousing and Safe Deposit Company, by Rich Y. Cook, Vice-President. Attest: Michael E. Fleming, Acting Secretary. (Seal.) The Baltimore and Ohio Railroad Company, by Daniel Willard, President. Attest: C. W. Woolford, Secretary. (Seal.) Baltimore and Philadelphia Railroad Company, by Daniel Willard, President. Attest: C. W. Woolford, Secretary. (Seal.) Schuylkill River East Side Railroad Company, by Daniel Willard, President. Attest: C. W. Woolford, Asst. Secretary. (Seal.)

[fol. 1015] B. & O. Exhibit No. 88

491-B

Agreement Between the Baltimore and Ohio Railroad Company, the Baltimore & Philadelphia Railroad Company, the Schuylkill River East Side Railroad Company, and the Pennsylvania Warehousing and Safe Deposit Company, August 2, 1926, Covering certain modifications of the terms and conditions expressed in agreements of April 10th, 1897, March 31st, 1902, August 22nd, 1904, and July 1st, 1911, with the Warehousing Co., Philadelphia, Pa.

Office of the Secretary B. & O. R. R. Co., Baltimore, Md.

[fol. 1016] 491-B

Agreement

Date and Parties

This agreement made this Second day of August, 1926, between The Pennsylvania Warehousing and Safe Deposit Company, hereinafter called "Warehousing Company", and The Baltimore and Ohio Railroad Company, The Baltimore and Philadelphia Railroad Company and The Schuylkill River East Side Railroad Company, hereinafter collectively called "Railroad Companies".

Prior Contracts Modified

Whereas under date of April 10, 1897, a certain agreement was entered into between the Pennsylvania Warehousing and Safe Deposit Company, The Tradesmen's Grain, Elevator and Storage Company, the Baltimore and Ohio Railroad Company and John K. Cowen and Oscar G. Murray, Receivers, which was supplemented by an agreement between the Pennsylvania Warehousing and Safe Deposit Company and the Baltimore and Ohio Railroad Company dated March 31, 1902, and by an agreement between the Pennsylvania Warehousing and Safe Deposit Company, the Baltimore and Ohio Railroad Company, the Baltimore and Philadelphia Railroad Company and the Schuylkill

River East Side Railroad Company dated August 22, 1904, and by an agreement between the Pennsylvania Warehousing and Safe Deposit Company, and the Baltimore and Ohio Railroad Company, the Baltimore and Philadelphia Railroad Company and the Schuylkill River East Side Railroad Company dated July 1, 1911, and,

Whereas it is desired to modify certain of the terms and conditions expressed in said agreements in the respects hereinafter mentioned.

Now, therefore, in consideration of the premises it is hereby agreed between the parties as follows:

[fol. 1017] Option on 23rd St. Stores Extended

1. The obligation of the Railroad Companies to take over the plant of the Warehousing Company at Twenty-third and Race Streets in the City of Philadelphia, and known as the Twenty-third Street Stores, as provided in the agreement of April 10, 1897, at the price of Two hundred and fifty-two thousand five hundred and ninety-nine dollars and twenty-six cents ($252,599.26) which was fixed by the supplementary agreement dated August 22, 1904, the time for the fulfillment of which obligation was extended until April 10, 1927, by agreement between the parties hereto dated July 1, 1911, is hereby extended to April 10, 1932. It is agreed, however, that the Railroad Companies shall have the option of taking over the property at any time within the extended period upon giving one year's notice of their desire to exercise their option, the year for the purpose of said notice beginning April 10th in any year.

Removal of Grain Elevator—Const'n of One-story Warehouse in Lieu

2. It is agreed that the grain elevatof building of the Warehousing Company which is a part of the property to be purchased and taken over by the Railroad Companies under the agreement of April 10, 1897, aforesaid and therein referred to as that to be purchased by the Warehousing Company from the Tradesmen's Grain Elevator and Storage Company, may be torn down and removed by the Warehousing Company, and it is further agreed that the Warehousing Company may erect upon the site of the said grain elevator, a one-story warehouse building of such

design, character and cost as shall meet with the approval of the Railroad Companies. The said warehouse building, if and when erected shall be included in the property to be taken over by the Railroad Companies under the said agreement of April 10th, 1897, in lieu of the elevator.

Cost of One-story Warehouse Add'l

It is further understood and agreed that the cost of said one-story warehouse building if erected shall be in addition to the sum already fixed by the said agreement of April 10, 1897 and supplementary agreement of August 22, 1904, and that any and all sums received by the Warehouse Company as salvage from the elevator shall be considered as a credit and deducted from said sum.

Minimum Tonnage Guarantee Cancelled—Terminal Allowance in Lieu

3. It is further agreed that all provisions of the aforesaid contracts with respect to the obligation of the Railroad Companies to guarantee a minimum tonnage are hereby cancelled. In lieu thereof the Railroad Companies agree to pay to the Warehousing Company as a terminal allowance for the facilities to be afforded as provided in and by the aforesaid agreements, fifty cents ($.50) per net ton of two thousand (2,000) pounds for every net ton moved into or out of the Twenty-third Street Stores of the Warehousing Company over the lines of the railroads of the Railroad Companies on which they receive a road haul instead of the thirty-five cents ($.35) per net ton as in said agreements mentioned so long as any other railroad in Philadelphia competitive with the Baltimore & Ohio, shall make similar allowance to other Warehouse Companies in Philadelphia competitive with the Pennsylvania Warehousing & Safe Deposit Co. unless sooner estopped from making such allowance by a decision or order of the Interstate Commerce Commission, the Public Service Commission of Pennsylvania, Court of Competent Jurisdiction or by law.

Cancellation and Purchase if Allowance Ceases

In the event the 50¢ allowance referred to above ceases, the Warehouse Company shall have the right to cancel this

agreement on three months' notice, and in that case the Railroad Company shall purchase, under the terms above referred to, the warehouse property, within one year from the expiration of such notice of cancellation.

Except as Modified, Prior Contracts in Effect

4. Except as hereby modified the aforesaid agreements between the parties hereto remain in effect in accordance with the terms thereof.

[fol. 1018] In testimony whereof the parties hereto have caused this agreement to be executed by their respective Presidents or Vice Presidents and their corporate seals to be attached, attested by their respective Secretaries or Assistant Secretaries the day and year first above written.

The Pennsylvania Warehousing & Safe Deposit Company, by George H. Earle, Jr., President. Attest: E. W. Oeseher, Secretary. (Corporate Seal.) The Baltimore and Ohio Railroad Company, by Archibald Fries, Vice President. Attest: G. F. May, Asst. Secretary. (Corporate Seal.) The Baltimore and Philadelphia Railroad Co., by Archibald Fries, Vice President. Attest: G. F. May, Asst. Secretary. (Corporate Seal.) The Schuylkill River East Side Railroad Co., by Archibald Fries, Vice President. Attest: G. F. May, Asst. Secretary. (Corporate Seal.)

[fol. 1019] The Baltimore and Ohio Railroad Company,
Baltimore, Md.

Archibald Fries, Vice-President, Traffic and Commercial Development

August 2d, 1926. A. 3540.

The Pennsylvania Warehousing & Safe Deposit Co., Philadelphia, Pa.

Attention Mr. Earle

Interpretation of Parts of Contract of 8-2-26

GENTLEMEN:

There is enclosed herewith one copy of the new agreement covering the 23rd Street Stores as to which there are two features to which I wish to call your attention and would like your acceptance.

Allowances at Delaware Ave. & Moro Phillips Stores

Nothing is said therein respecting the loading and unloading allowances at your Delaware Avenue and Moro Phillips Stores for the reason that as the 23rd Street situation involved a capital investment any contract relating thereto should be made separate and distinct from anything else.

You may, however, accept this letter as an agreement on the part of The Baltimore & Ohio to make you an allowance of 50 cents per ton for loading and unloading carload freight at your Delaware Avenue and Moro Phillips Stores, so long as those stores are operated by the Pennsylvania Warehousing & Safe Deposit Company, when such freight has had or is to receive a road haul movement over the Baltimore & Ohio Railroad, and so long as any allowance is made by either the Pennsylvania or the Philadelphia & Reading Railroad Company to the Pennsylvania Werehousing & Safe Deposit Company or to any other warehouse company or companies in Philadelphia, unless sooner estopped from making such allowance by a decision or order of the Interstate Commerce Commission, The Public Service Commission of Pennsylvania, Court of Competent Jurisdiction or by law.

Further in executing and delivering the agreement enclosed, we do so with the understanding that the language of its third paragraph, i. e., "so long as any other railroad in Philadelphia competition with the Baltimore and Ohio, etc. * * *" shall be taken to mean and include the Pennsylvania and Philadelphia & Reading Railroads only, and I will be glad if you will confirm this interpretation and your agreement to these two matters which will thus obviate the necessity of the agreements' reexecution. Copies of this letter and your reply can then be attached to and filed with the original agreement.

Yours very truly, Archibald Fries.

[fol. 1020] Pennsylvania Warehousing and Safe Deposit Co.

Executive Offices: 113-115 South Third Street, Philadelphia
Office of Vice-President & General Superintendent

August 2, 1926

Mr. Archibald Fries, Vice-President in charge of Traffic, Baltimore & Ohio Railroad Co., Baltimore, Md.

Dear Mr. Fries: We accept the provisions of your letter of August 2, 1926 supplementary to and a part of the Agreement between the Baltimore & Ohio Railroad and the Pennsylvania Warehousing & Safe Deposit Company of even date herewith, and understand that the same has the full force and effect as though the same were dully incorporated in the said Agreement.

Assuring you of our earnest desire to co-operate with your Company in the satisfactory business arrangement subsisting between us, and with kind regards believe me to be,

Very truly yours, Ralph Earle, Vice-President.

RE/m.

[fol. 1021] Complainants' Exhibit No. 98

I. C. C. Docket No. 20968

Witness: ——

Allowances by Pennsylvania Railroad Company to Warehouse Companies at Philadelphia, Pa.

Tariff, GO I. C. C. No. 14400

Item 3, Section a:

When freight is handled through the warehouses shown below, allowances will be made on in-bound and out-bound freight by the Railroad Company to these companies for services performed as follows:

Merchants' Warehouse Company, Delaware Avenue, Water, Chestnut, and Walnut Streets, Philadelphia, Pa.

On flour in barrels, 50,000 barrels or less handled in one month	3½ cents per barrel.
On flour in barrels, over 50,000 barrels handled in one month	2½ cents per barrel.
On flour other than in barrels, and all other merchandise	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic milled, mixed, malted or stored, in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

Item 3, Section b:

Merchants' Warehouse Company, Fifteenth and Carpenter Streets, Philadelphia, Pa.

On flour in barrels, 50,000 barrels or less handled in one month	3½ cents per barrel.
On flour in barrels, over 50,000 barrels handled in one month	2½ cents per barrel.
On flour other than in barrels and all other merchandise	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic milled, mixed, malted or stored, in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

[fol. 1022] Item 3, Section c:

At Philadelphia, Pa.

Merchants' Warehouse Company, Thirty-first and Chestnut Streets, Front and Berks Streets, Beach and Laurel Streets, and Federal Street

All freight	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic, milled, mixed, malted or stored, in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

Item 3, Section d:

Merchants' Warehouse Company, Front and Bainbridge Streets, Philadelphia, Pa.

On flour in barrels, 50,000 barrels or less handled in one month	3½ cents per barrel.
On flour in barrels, over 50,000 barrels handled in one month	2½ cents per barrel.
On flour other than in barrels, and all other merchandise	35 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic milled, mixed, malted or stored, in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

Item 3, Section e:

Merchants' Warehouse Company, Bainbridge, Front, Kenilworth, and Penn Streets, Philadelphia, Pa.

On flour in barrels, 50,000 barrels or less handled in one month	3½ cents per barrel.
On flour in barrels, over 50,000 barrels handled in one month	2½ cents per barrel.
On flour other than in barrels, and all other merchandise	35 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic milled, mixed, malted or stored, in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

[fol. 1023] Supplement No. 5 to Tariff GO I. C. C. No. 14400

Item 2½, Section a:

(First established effective 9-1-27, in Supplement No. 2.)

Merchants' Warehouse Company, Delaware Avenue, Bainbridge Street, Penn Street, and Kenilworth Street

On flour in barrels, 50,000 barrels or less handled in one month	3½ cents per barrel.
On flour in barrels, over 50,000 barrels handled in one month	2½ cents per barrel.
On flour other than in barrels, and all other merchandise	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic, milled, mixed, malted or stored in transit under the provisions of tariffs lawfully on file with the Interstate

Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the warehouse company.

Supplement No. 6 to Tariff GO I. C. C. No. 14440

Item No. 3, Section g:

Quaker City Cold Storage Co., Spruce Street Stores

On in-bound less than carload shipments of Butter, Cheese, Eggs and Dressed Poultry	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the Quaker City Cold Storage Company.

Item No. 3, Section h:

Quaker City Cold Storage Co., Spruce Street Stores

On in-bound carload shipments of Butter, Cheese, Eggs and Dressed Poultry	50 cents per 2,000 pounds.

No payment will be made on in-bound or out-bound traffic stored in transit under the provisions of tariffs lawfully on file with the Interstate Commerce Commission and The Public Service Commission of the Commonwealth of Pennsylvania, nor on any traffic consigned to or by the Quaker City Cold Storage Company.

[fol. 1024] COMPLAINANT'S EXHIBIT No. 99

I. C. C. Docket 20968.

Witness: Morgan

Certain Lessees of Space from the Merchants Warehouse Company at Philadelphia, Pa.

Vacuum Oil Company	Federal Stores.
Williamsport Wire Rope Company	Kenilworth Stores.
The Rossville Company	" "
John B. Astell & Company	31st & Chestnut.
Richardson & Boynton Company	Webb Warehouse.
American Steel & Wire Company	River Front Stores.
The Quaker Oats Company	" " "
Sherwin-Williams Company	" " "
B. Kessler	Bainbridge Stores.
Seaboard Seed Company	Kenilworth Stores
C. G. Justice Company	" "
Borden Stove Company	Webb Warehouse
Perfection Stove Company	" "
Comly-Flanigan Company	River Front Stores
Quaker City Wholesale Grocery Company	Webb Warehouse
Sterling Supply Corporation	Franklin Stores
A. Goldman	" "
Livingstone Brothers	31st & Chestnut
Rundle Mfg. Company	" "
Hart & Crouse	" "
W. A. Huey	" "

Identified as submitted to Mr. Richardson and he testified as to same # 10/10/28.

Wm. A. G., Jr.

[fol. 1025] EXHIBIT No. 100

F. D. No. 199 (Corrected to April 26, 1926)

Cancels F. D. No. 359 and F. D. No. 199 (Corrected to June 1, 1924)

The Pennsylvania Railroad Company (Lines Pittsburgh, Pa., Oil City, Pa., Erie, Pa., and East), West Jersey and Seashore Railroad Company

Philadelphia, Pa.

List of Private Sidings, Steamship Lines, Piers, and Carload and Less-carload Deliveries, with Instructions for Billing Thereto; Also Street Directory for Shipments to Philadelphia

Issued April 26, 1926, by
G. R. Richardson, Chief of Tariff Bureau, Philadelphia, Pa.; C. T. Mackenson, Jr., Freight Traffic Manager, Philadelphia, Pa.; E. P. Bates, Assistant Freight Traffic Manager, Philadelphia, Pa.; A. J. Ball, General Freight Agent, Philadelphia, Pa.; R. R. Blydenburgh, Assistant General Freight Agent, Philadelphia, Pa.; E. A. Stockton, Comptroller, Philadelphia, Pa.; V. P. Sumerfield, Assistant General Freight Agent, Philadelphia, Pa.; W. H. H. Willis, Division Freight Agent, Philadelphia Pa.

G. O. 1674 P. A. 407667.
Agent's Index No. 41.

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List of Carload Delivery Orders Filed by Individuals and Industries at Philadelphia	37 to 50 inc.
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[fols. 1027-1031] Regulations governing the forwarding of carload and less-carload freight for Philadelphia, Pa., when consigned to firms or individuals having private sidings on the Pennsylvania Railroad, Philadelphia, Pa., as listed on pages 7 to 23 inc.

(For list of freight stations, public delivery or team tracks see pages 4 to 6 inc.)

Carload and less carload freight for parties named in the alphabetical list of private sidings, unless otherwise consigned, should be waybilled in accordance with instructions in column headed "Revenue waybill should read to." See pages 7 to 23 inc.

When more than one delivery is shown in this book for the same consignee the shipper should be required to specify the delivery desired.

As parties named in the alphabetical list may require deliveries other than those specified in the list, agents should forward to the delivery shown only when same is not contrary to shippers' instructions.

On pages 37 to 49 of this tariff is published carload delivery orders by various receivers of freight in Philadelphia both with and without sidings indicating delivery desired when shipments are consigned simply to Philadelphia. Agents should be guided by this list as well as by the list of firms or individuals having private or assigned sidings.

Firm name	Location	Revenue waybill should read to
Baeder, Adamson & Co.	Allegheny Avenue and Richmond St.	Kensington (Ontario Street).
Bailey Co., J. T., Nos. 1 and 2	Delaware Avenue and Tasker Street	Washington Avenue Wharf.
Bailey Warehouse	Delaware Avenue and Tasker Street	Washington Avenue Wharf.
Bailey Warehouse	Delaware Avenue and Bainbridge St.	Washington Avenue Wharf.
Baker, Frank	1232 Washington Avenue	Broad and Washington Avenue.
Bala & Merion Electric Co.	Cynwyd	Cynwyd.
Baldi, C. C. A., Bros. & Co.	1216 Washington Ave.	Broad and Washington Street.
Baltimore and Carolina S. S. Co., No. 3	Pier 30 South	Washington Avenue Wharf.
Barber Asphalt Co.	30th and Race Streets	West Philadelphia Stock Yards.
Barber Steamship Line	Pier 56 South	Washington Avenue Wharf.
Barneato and Mardello	1238 Washington Avenue	Broad and Washington Avenue.
Barret Co., The, Nos. 1, 3, 7, 8 and 9	Bermuda and Tucker Streets	C. L. Kensington (Ontario Street) L. C. L. Kensington. C. L. Gray's Ferry. L. C. L. Woodland Avenue.
Barret Co., The, Nos. 2, 5 and 6	36th Street and Gray's Ferry Road	
Bartle, C.	25th Street and Sedgley Avenue	North Philadelphia.
Barton, H. H., & Son Co.	State Road, near Township Line	Tacony.
Baton, Henry E.	39th and Parish Streets	52nd Street Station.
Batty & Sons Co., Alfred	Tacony Road and P. R. R.	Frankford.
Baugh and Sons Co., Nos. 1 and 2	Morris Street Wharf	Washington Avenue Wharf.
Beale and Snyder	6726 State Road	Tacony.
Becker, Smith & Page, Inc., Nos. 1 and 3	Snyder Avenue and Water Street	Washington Avenue Wharf.
Belfield, H., & Co.	20th and Cambria Streets	North Philadelphia.
Bell, William	1316 Washington Avenue	Broad and Washington Avenue.
Belmont Iron Works, Nos. 1 and 4	22nd Street and Washington Avenue	Broad and Washington Avenue.
Belmont Packing and Rubber Co.	Trenton Avenue and Butler Street	Kensington (Ontario Street).
Belmont Water Works	Belmont	Fifty-Second Street.
Berg, David, Industrial Alcohol Co.	Swanson and Tasker Streets	Washington Avenue Wharf.
Berger Manufacturing Co.	16th Street and Washington Avenue	Broad and Washington Avenue.
Bergner & Engel Brewing Co., The	32d and Master Streets	Engelside.

Alphabetical List of Sidings in Philadelphia—Continued

Firm name	Location	Revenue waybill should read to
Birkinstein, Samuel, and Son, Inc.	25th and Ellsworth Street	C. L. Broad and Washington Ave. L. C. L. Oakford Street.
Bisbee Linseed Oil Co.	Greenwich Point	Washington Avenue Wharf.
Black Diamond S S Co.	Pier 19 North	C. L. Vine Street. L. C. L. Federal Street.
Blumenthal Bros.	Margaret and James Streets	Frankford.
Boger and Crawford	Venango and J Streets	Frankford.
Bombay American Line	Girard Point	Girard Point.
Bond Co., Chas.	Gaul and Adams Streets	C. L. Shackamaxon (Norris Street). L. C. L. Kensington.
Borden Stove Co.	Webb Terminal, Delaware Avenue and Walnut Street	Dock Street.
Bortel, E. S., Co.	1913 Washington Avenue	Broad and Washington Avenue.
Botfield Refractories Co.	776 So. Swanson Street	Washington Ave. Wharf.
Bower, Henry, Chemical Co., No. 2	29th Street and Gray's Ferry Road	C. L. Broad and Washington Ave. L. C. L. Oakford Street.
Box, Alfred, and Co., Nos. 1 and 2	713 North Front Street	Shackamaxon.
Box, Alfred, and Co.	Ontario and Trenton Avenue	C. L. Kensington (Tioga Street). L. C. L. Ontario Street.
Bradlee and Co., Inc.	Beach Street and Susquehanna Ave.	Shackamaxon.
Brady-Hindle Lumber Co.	48th and Upland Streets	Gray's Ferry (Woodland Avenue)
Brann and Stuart, No. 1	State Road and Bleigh Street	Tacony.
Bredt's Drayage	938 South Delaware Avenue	Washington Avenue Wharf.
Brehm and Stehle (Allegheny Dye Works)	Allegheny and Trenton Avenues	Kensington (Ontario Street).
Brennen, Frank, No. 1	25th and Tasker Streets	C. L. Broad and Washington Ave. (Point Breeze). L. C. L. Broad and Washington Ave.
Breyer Ice Cream Co.	46th and Linmore Streets	Gray's Ferry (Woodland Avenue).
Bridgman Bros. Co.	31st Street and Woodland Avenue	C. L. West Philadelphia (31st and Chestnut Streets). L. C. L. 30th and Market Streets.
Brill, J. G., Co., Nos. 2 and 3	62d Street and Woodland Avenue	C. L. Gray's Ferry. L. C. L. Woodland Avenue.

Bristol City Line	Pier 19 North	C. L. Vine Street. L. C. L. Federal Street.
Brooklyn Cooperage Co.	Delaware Avenue and Reed Street	Washington Avenue Wharf.
Brown, E. E., & Co., No. 1	Dilworth and McKean Streets	Washington Avenue Wharf.
Bruner, H. F., & Co., No. 1	14 North 21st Street	C. L. West Philadelphia (31st and Chestnut Streets). L. C. L. 30th and Market Streets.
Bruner, J. M., & Co.	4515 Girard Avenue	Fifty-second Street.
Budd, E. G., Manufacturing Co.	25th Street and Hunting Park Ave.	C. L. Midvale, Nicetown (Westmoreland). L. C. L. North Philadelphia.
Budd Wheel Corporation	Stockeley and Westmoreland Streets	C. L. Midvale, Nicetown (Westmoreland). L. C. L. North Philadelphia.

NOTE.—From restricted territory for Dock Street (See Page 6) use Federal Street.

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[fol. 1038]

Firm name	Location	Revenue waybill should read to
Letter's, Owen, Sons	Trenton Avenue and Westmoreland St.	Kensington (Ontario Street).
Leuton Brick Co.	25th Street and Passyunk Avenue	Broad and Washington Avenue. (Point Breeze).
Lewis, John T., & Bros. Co	2545 Aramingo Avenue	C. L. Shackamaxon (Norris Street). L. C. L. Kensington.
Lewis, John T., & Bros. Co	Huntingdon and Moyer Streets	C. L. Shackamaxon (Norris Street). L. C. L. Kensington.
Leyland Line	Piers 53 and 55 South	Washington Avenue Wharf.
Liberty Coal Co.	25th and Washington Avenue	Broad & Washington Ave.
Lincoln Furniture Co.	19th Street and Lehigh Avenue	North Philadelphia.
Linde Air Products Co.	18th and Cambria Streets	North Philadelphia.
Liquid Carbonic Co.	Tioga and Weikel Streets	C. L. Kensington (Tioga Street). L. C. L. Kensington (Ontario Street).
Lit Brothers	20th and Washington Avenue	Broad and Washington Avenue.
Livezey, John R.	22nd Street and Glenwood Avenue	North Philadelphia.
Livezey, Thos. H., & Co.	Sedgley Avenue and Dauphin Street	North Philadelphia.

Alphabetical List of Sidings in Philadelphia—Continued

Firm name	Location	Revenue waybill should read to
Lloyd Royal Belge	Pier 98 South	Washington Avenue Wharf.
Lloyd, Wm. M., Co., Ltd., No. 2	29th Street and Ridge Avenue	North Philadelphia.
Lloyd, Wm. M., Co., Ltd., No. 4	Susquehanna Ave. Wharf	Shackamaxon.
Loose-Wiles Biscuit Co.	Front & Brown Sts.	Shackamaxon.
Lower Merion Builders Supply Co.	Cynwyd, Pa.	Cynwyd, Pa.
Lowry, Alfred, and Bro., Nos. 1 and 2	50 North Delaware Avenue	C. L. Vine Street. L. C. L. Dock Street.
Luckenbach Steamship Co.	Pier 78 South	Washington Avenue Wharf.
Lukens, Lewis N.	19th Street and Washington Avenue	Broad and Washington Avenue.
Lupton's David, Sons	Allegheny Avenue and Tulip Street	Kensington (Ontario Street).
McAllister Coal Co.	25th and Dickinson Streets	Broad and Washington Avenue (Point Breeze).
McCahan, W. J., Sugar Refining and Molasses Co.	Swanson and Morris Streets	Washington Avenue Wharf.
McCahan, W. J., Sugar Refining and Molasses Co.	Tasker Street Wharf	Washington Avenue Wharf.
McCalla Co., Harold	Pier 56, North Wharves	Shackamaxon.
McCauley, Geo.	Swanson and Wolf Streets	Washington Avenue Wharf.
MacDonald Corp'n	Tioga & Memphis Streets	C. L. Kensington (Tioga St.). L. C. L. Kensington (Ontario St.).
McGowan, Thos. F.	25th and Tasker Streets	C. L. Broad and Washington Ave. (Point Breeze). L. C. L. Broad and Washington Ave.
McHatton Smelting Co.	15th Street and Washington Avenue	Broad and Washington Avenue.
McIlvain, J. Gibson, & Co.	58th Street and Woodland Avenue	C. L. Gray's Ferry. L. C. L. Woodland Avenue.
McKechnie Bros.	Delaware Ave. and Bigler St.	Washington Avenue Wharf.
McElvey Bros.	Cedar Street and East Lehigh Ave.	Shackamaxon (Norris Street).
McMullen, Arthur & Co., No. 2	East of Broad Street	Broad and Washington Avenue.
Mack Paving Construction Co.	Nicetown Lane and C Street	North Penn Junction.
Magee Bros.	C and Ontario Streets	Fairhill.
Mahedy, Michael	25th and Dickinson Streets	C. L. Broad and Washington Ave. (Point Breeze). L. C. L. Oakford Street.

Mallory Line	Pier 98 South	Washington Avenue Wharf.
Malone, Watson, and Sons	Pier 44 North	Shackamaxon.
Maneely, John	D Street and Erie Avenue	North Penn Junction.
Mann, David I.	6543 Green Street	Chelten Avenue, Germantown, (Carpenter).
Margolis and Co., S.	3100 Germantown Avenue	North Philadelphia.
Margolis, S., No. 1	819 Washington Avenue	Broad and Washington Avenue.
Margolis, S., No. 2	48th Street and Parkside Avenue	Fifty-second Street.
Marine Decking and Supply Co.	Tioga and Memphis Streets	C. L. Kensington (Tioga Street). L. C. L. Kensington (Ontario Street).
Marine Transport Co.	Pier 19 North	C. L. Vine Street. L. C. L. Federal Street.
Maris Bros.	56th Street and Gray's Avenue	C. L. Gray's Ferry. L. C. L. Woodland Avenue.
Market Street Elevated Passenger Railway Co.	69th Street Terminal	Milbourne Mills.
Markmann and Co.	Water Street below Dickinson	Washington Avenue Wharf.
Marshall Iron and Metal Co.	1327 Washington Avenue	Broad and Washington Avenue.
Martin Co., The L., Nos. 1 and 2	Milnor and Bleigh Streets	Tacony.
Masland, C. H., & Sons	Trenton Avenue and Willard Street	Kensington (Ontario Street).
Mason-Heflin Coal Co.	Girard Avenue and Norris Street	Shackamaxon (Norris Street).
Mason-Heflin Coal Co.	Trenton Avenue and Venango Street	Kensington (Ontario Street).
Mathers Coal Co., Frank P.	10th Street and Washington Avenue	Broad and Washington Avenue, Angora.
Mathers, J. W., & Sons, Nos. 2 & 4	52nd and Whitby Streets	Angora.
Maxwell's, John, Sons No. 1	30th Street below Spruce	C. L. West Philadelphia (31st and Chestnut Streets). L. C. L. West Philadelphia (30th and Market Streets).
Merchant and Evans Co.	2025 Washington Avenue	Broad and Washington Avenue.
Merchants Warehouse Co.	Front and Bainbridge Streets	Washington Avenue Wharf.

NOTE.—From restricted territory for Dock Street (See Page 6) use Federal Street.

Alphabetical List of Sidings in Philadelphia—Continued

[fols. 1039-1044]

Firm name	Location	Revenue waybill should read to
Merchants' Warehouse Co., No. 1	15th and Carpenter Streets	Broad and Washington Avenue.
Merchants' Warehouse Co., No. 2	31st and Chestnut Streets	C. L. West Philadelphia (31st and Chestnut Streets). L. C. L. West Philadelphia (30th and Market Streets).
Merchants' Warehouse Co., No. 3	Front Street, below Berks	Kensington.
Merchants' Warehouse Co., No. 4	Beach Street, above Laurel	Shackamaxon.
Merchants' Warehouse Co., Nos. 5 and 6 (River Front Stores)	Delaware Avenue and Chestnut St.	Dock Street.
Merchants' Warehouse Co., (Kenilworth Stores)	Front and Bainbridge Streets	Washington Avenue Wharf.
Merchants' Warehouse Co., (Webb Warehouse)	Delaware Avenue and Walnut Street	Dock Street.
Metzel Co., T. B.	913 North Front Street	Shackamaxon.
Midvale Co., The, Nos. 1, 2 and 3	Nicetown	Midvale.
Mifflin Chemical Corp. Nos. 2 & 3	Commercial Avenue and Mifflin St.	Washington Avenue Wharf.
Miller and England	1124 Washington Avenue	Broad and Washington Avenue.
Miller Lock Co.	4530 Tacony Street	Frankford.
Miller North Broad Storage Co.	52nd Street and Whitby Avenue	Angora.
Miller, Robinson and Co.	Sixth Street and Sedgley Avenue	North Penn Junction.
Mills Co., E. W.	River Front Stores, Delaware Ave. & Chestnut Street	Dock Street.
Milne, C. J., & Sons	11th Street and Washington Avenue	Broad and Washington Avenue.
Mink Smelting and Refining Co.	18th Street and Washington Avenue	Broad and Washington Avenue.
Mitchel Co., C. J.	31st Street, below Chestnut	C. L. 31st and Chestnut Streets. L. C. L. 30th and Market Streets.
Mitchel Lumber & Coal Co.	Pembroke, Pa.	Pembroke, Pa.
Monaghan, Chas. E.	Tioga and Edgemont Streets	C. L. Kensington (Tioga Street). L. C. L. Kensington (Ontario Street).
Monican Pottery Co.	Westmoreland and Tulip Streets	Kensington (Ontario Street).

Montgomery Bros.	21st Street and Penrose Avenue	C. L. Broad and Washington Ave. (Point Breeze).
		L. C. L. Broad and Washington Ave.
Moore, John W.	26th Street and Susquehanna Avenue	North Philadelphia.
Moore, Kelly & Co.	25th and Morris Streets	C. L. Broad and Washington Avenue. (Point Breeze).
		L. C. L. Oakford Street.
Moore & McCormack	Pier 5, North	Washington Avenue Wharf.
Moorhouse, R. T.	2655 Bridge Street	C. L. Bridesburg.
		L. C. L. Frankford.
Morey Buckwalter Co.	25th & Morris Streets	C. L. Pt. Breeze.
		L. C. L. Oakford Street.
Morganthaler Bros.	Swanson and Wolf Streets	Washington Avenue Wharf.
Moro-Philips Stores (Penna. Warehousing and Safe Deposit Co.)	Delaware Avenue and Fitzwater St.	Washington Avenue Wharf.
[1] Morris and Co.	26 So. Delaware Avenue and 8 No. Delaware Avenue	C. L. Vine Street.
		L. C. L. Dock Street.
Morris, I. P., Co.	Beach and Ball Streets	Shackamaxon.
Morice Jute Mills	Swanson and Dickinson Streets	Washington Avenue Wharf.
Morrison, J. Spencer	8233 Frankford Avenue	Holmesburg Junction.
Morris Wheeler & Co., Nos. 1, 2 and 3	30th and Locust Streets	C. L. West Philadelphia (31st and Chestnut Streets).
		L. C. L. West Philadelphia (30th and Market Streets).
Motz, Chas., Estate of	1038 Allegheny Avenue	North Philadelphia.
Mountain Valley Water Co.	Water and Morris Streets	Washington Avenue Wharf.
Mt. Vernon Supply Co.	Umbria and Gates Streets, Manayunk, Pa.	Manayunk (East).
Mulcomroy Co., Inc.	54th and Jefferson Streets	Fifty-second Street.
Municipal Piers (See Piers Reached by P. R. R. Page 18).		
Municipal Pier No. 82 South	Delaware Avenue and Wolf Street	Washington Avenue Wharf.
Municipal Pier No. 84 South	Delaware Avenue and Wolf Street	Washington Avenue Wharf.
Murray Oil Products Co.	Pierce and Margaret Streets	Kensington (Ontario Street).

[1] Takes delivery from P. R. R. track.

Alphabetical List of Sidings in Philadelphia—Continued

Firm name	Location	Revenue waybill should read to
Mutual Transportation Co.	Delaware Avenue, above Green	Shackamaxon.
Nass, Geo. & Sons	Glenwood Ave. & Dauphin St.	North Philadelphia.
National Alloy Co.	25th and Dickinson Streets	C. L. Broad and Washington Avenue. (Point Breeze). L. C. L. Oakford Street.
National Ammonia Co.	Dark Run Lane & Delaware Ave.	C. L. Bridesburg. L. C. L. Frankford.
National Biscuit Co.	12th and Glenwood Avenue	North Philadelphia.
National Biscuit Co., No. 4	13th and Glenwood Avenue	North Philadelphia.
National Essence For Coffee Co.	19 Washington Avenue	Washington Avenue Wharf.
National Fireproofing Co.	24th Street and Washington Avenue	Broad and Washington Avenue.
Neef, J., Jr.	21st and Westmoreland Streets	North Philadelphia.

NOTE—From restricted territory for Dock Street (See Page 6) use Federal Street.

[fols. 1045-1049]

Southwark Foundry and Machine Co. Nos. 1 and 2	430 Washington Avenue	Broad and Washington Avenue.
Southwark Foundry and Machine Co. Nos. 3 and 4	417 Washington Avenue	Broad and Washington Avenue.
Spiegle, G. M., & Co.	18th Street and Sedgley Avenue	North Philadelphia.
Spruce Street Stores (Penna. Cold Storage and Market Co.)	Delaware Avenue and Spruce Street	Dock Street.
Standard Coal Supply Co.	1910 Washington Avenue	Broad and Washington Avenue.
Standard Oil Co., No. 5	28th Street, below Passyunk Avenue	C. L. Broad and Washington Avenue. (Point Breeze). L. C. L. Broad and Washington Ave. Fairhill.
Standard Packing Box Co.	Venango and A Streets	West Philadelphia Stock Yards.
Standard Piping and Fitting Co.	30th Street, above Race Street	Engelside.
Standard Sanitary Mfg. Co.	Oxford Street and Glenwood Avenue	

Standard Supply and Equipment Co.	17th Street and Lehigh Avenue	North Philadelphia.
Standard Tin Foil Corp.	Torresdale Avenue and Church St.	Frankford.
Stanley Coal Co.	2d Street and Washington Avenue	Broad and Washington Avenue.
Star Coal Co.	1333 Washington Avenue	Broad and Washington Avenue.
Steiner, J. J.	River Front Stores, Delaware Avenue and Chestnut Street	Dock Street.
Stelwagon Manufacturing Co.	19th Street and Washington Avenue	Broad and Washington Avenue.
Stern, Jacob, and Sons	Tioga and Aramingo Streets	C. L. Kensington (Tioga Street). L. C. L. Kensington (Ontario St.).
Stewart & Son	36th and Grays Ferry Rd.	C. L. Gray's Ferry. L. C. L. Woodland Ave.
Stoddart, Isaac	1208 Washington Avenue	Broad and Washington Avenue.
Sun-Maid Raisin Co.	River Front Stores, Delaware Avenue and Chestnut Street	Dock Street.
Supplee-Wills-Jones Milk Co.	30th and Locust Streets	West Philadelphia (31st and Chestnut Streets).
Supplee-Wills-Jones Milk Co.	46th Street and Girard Avenue	Fifty-second Street.
Supplee-Wills-Jones Co.	49th and Merion Avenue	Fifty-second Street.
Surpass Leather Co.	9th Street and Westmoreland Ave.	North Philadelphia.
Sutton and Stephenson	1317 Washington Avenue	Broad and Washington Avenue.
Swanson Stores	810 Swanson Street	Washington Avenue Wharf.
* Swift and Co.	22 North Delaware Avenue	C. L. Vine Street. L. C. L. Dock Street.
Sykes, Joseph H.	20th and Cambria Streets	North Philadelphia.
Tabor Manufacturing Co.	State Road and Robbins Street	Tacony.
Tacony Coal & Line Co.	State Road and Unrah St.	Tacony.
Tacony Steel Co., Nos. 1, 2 and 3	Milnor and Bleigh Streets	Tacony.
Tanners Products Co.	7th Street and Glenwood Avenue	North Penn Junction.
Taylor Co., A.	D Street and Erie Avenue	North Penn Junction.
Terminal Coal Co.	63rd and Market Streets	Milbourne Mills.
Terminal Warehouse Co., 4, 5, 6, & 7	Delaware Avenue and Green Street	Shackamaxon.
Ternan Lumber Co.	20th Street and Glenwood Avenue	North Philadelphia.
Terry-Gerbron Co.	Grant Avenue	Bustleton, Pa.
Texas Co., The, No. 5	Commercial Avenue, near Snyder	Washington Avenue Wharf.

* Take delivery from P. R. R. track.

Alphabetical List of Sidings in Philadelphia—Continued

Firm name	Location	Revenue waybill should read to
Thomas Bros. Co.	1526 Washington Avenue	Broad and Washington Avenue.
Thomas, Edwin M., Nos. 1 and 2	State Road, Torresdale	Torresdale.
Thomas, M. L. (West Philadelphia Charcoal)	63rd and Market Streets	Milbourne Mills.
Thompson, J. M., and Co.	105 South Water Street	Dock Street.
Thompson, L. M.	Bala and Union Avenues, Bala, Montgomery Co.	Bala, Pa.
Thompson, Lewis and Co., Inc.	49th Street and Botonac Avenue	C. L. Gray's Ferry. L. C. L. Woodland Avenue.
Tidewater Oil Sales Corp.	Gray's Avenue and 49th Street	C. L. Gray's Ferry. L. C. L. Woodland Avenue.
Tioga Coal Co.	Tioga and Tulip Streets	Kensington (Tioga Street).
Tomson, P. C., and Co.	Delaware Avenue, North of Washington Avenue	Washington Avenue Wharf.
Toomey, Frank	Canal Street, below Laurel	Shackamaxon.
Torresdale Filtration Works (Phila. City Filtration Plant)	State Road and Pennypack Lane	Holmesburg Junction (Lindonfield).
Trans-Continental Freight Co.	Delaware Avenue and Vine Street	Vine Street.
Treen Box Co.	Tioga and Memphis Streets	C. L. Kensington (Tioga Street). L. C. L. Kensington (Ontario Street).
Trenton Trans. Co. (Dolphin Lines)	Pier 3, North	C. L. Vine Street. L. C. L. Federal Street.
Trimble Bros.	D Street and Erie Avenue	North Penn Junction.
Tunnell, F. W., and Co.	Wheatsheaf Lane and Gaul Street	Kensington (Ontario Street).

NOTE.—From restricted territory for Dock Street (See Page 6) use Federal Street.

Numerical List of Freight Stations and Team Tracks

For Street Location See Alphabetical List of Stations and Team Tracks Page

Station No.	Station	Note
1	West Phila., Market House 32d St. and Lancaster Ave. Crane Yd.	T
	30th and Market Sts.	A
2	West Philadelphia Stock Yards	G
3	Liddonfield	B
4	52d Street	A
4	52d Street and Parkside Avenue	T
5	Overbrook	A
5	Overbrook Contractor's Siding	T
6	31st and Chestnut Streets	B
7	Woodland Avenue	A
8	Angora	A
9	Gray's Ferry	B
9	Gray's Ferry 60th Street Yard	T
9	So. Broad St. Yard	T
10	Queen Street	B
11	Paschall	A
12	Pencoyd	P
13	Broad St. and Washington Ave.	A
13	Broad St. and Washington Ave. Tram Track	T
14	Oakford Street	A
15	Federal Street	A
16	Morris Street	B
17	Washington Avenue Wharf	D
17	Washington Avenue Wharf, Porter St. Yard	T
17	Washington Avenue Wharf Shunk St.	T
17	Washington Avenue Wharf Wharton St.	T
18	Greenwich	B
20	Girard Point	B
	League Island Navy Yard	H
	Phila. Navy Yard (See League Island Navy Yard)	
21	Point Breeze	B
22	Broad and Pollock Streets	B
23	Engelside	A
24	Girard Point Elevator (Grain)	B
25	North Philadelphia	A
25	North Philadelphia 18th and Cambria Sts.	T
25	North Philadelphia 15th Street Yard	T
25	North Philadelphia 12th Street Yard	T
25	North Philadelphia Este'y Yard	T
25	North Philadelphia Diamond Street Yard	T
26	North Penn Junction	A
26	North Penn Junction Erie Ave. and D St.	T
27	Frankford	A
28	Bridesburg	B
28	Fitler Siding	H
29	Tacony	A
30	Holmesburg Junction	A
30	Holmesburg Junction Ashburner St. Siding	T
30	Rowland	H
31	Holmesburg	B
32	Bustleton	A
33	Fairhill	A
34	Ontario Street	A
34	Ontario Street Pearce Street	T
35	Torresdale	A
36	Kensington	A
37	Norris Street	B
38	Tioga Street	B
39	Shackamaxon	A
40	Vine Street Note 3	E
40	Vine Street Team Track Note 3	T
41	Walnut Street Wharf (Note 2)	K
42	Dock Street (Note 1)	K
43	Westmoreland	B
44	Midvale (Nicetown)	A
45	Chelton Avenue, Germantown	A
46	Carpenter	B
47	Allen Lane	B
48	St. Martins	B

Numerical List of Freight Stations and Team Tracks—Continued

Station No.	Station	Note
49	Chestnut Hill	A
50	Germantown Road	B
51	Wynnefield Avenue	B
52	Bala	A
53	Cynwyd	A
54	Manayunk (East)	A
55	Shawmont	A
56	Barmouth	A
57	Fernwood	B
58	Pembroke	A
59	Millbourne Mills	A
59	End of Cardington Branch	H
59	Sixty-third & Market Sts.	T
66	Ivy Hill	A
67	Cinnaminson	C
68	Sears	J
	Sears	
68	Friends Hospital	H
69	Wyoming Avenue	B
115	Oxford Road	B
116	Ashton	B
117	West Manayunk	B

NOTES

A—Carloads and less.
B—Carloads only.
C—Less carloads only.
D—Only import, export and coastwise freight, and carloads to and from private sidings handled.
E—Carloads and less outbound. Carloads only inbound.
F—Carloads only outbound. Carloads and less inbound.
G—Livestock, stockyard supplies and products only.
H—Individual Siding shipper must arrange with owner.
J—Shipments for account of Sears, Roebuck Co. only can be handled here.
K—No track delivery.
P—Private siding.
T—Team or public delivery track, carloads only.

NOTE 1.—Dock Street.

Freight will be handled at this station to and from the following territory only:
Monongahela Division; Pittsburgh, Pa.; Buffalo and Erie, inclusive, and points West thereof (All-rail and rail and lake); Baltimore, Washington, Hagerstown, Md.; Norfolk, Va.; Richmond, Va.; and points South via Atlantic Coast line, Chesapeake & Ohio Railway, Norfolk and Western, Norfolk Southern, Seaboard Air Line, Southern Railway and connections.

NOTE 2.—Walnut Street Wharf.

Freight will be handled at this station to and from the following territory:

All points in the State of New Jersey and all connecting lines when routed via junction points in the state of New Jersey; also points on the Long Island Railroad and New England and Canadian points when routed via Jersey City or Greenville, N. J., New York, New Haven & Hartford Railroad and connections.

NOTE 3.—Vine Street.

Handles no less carload freight inbound. Handles less carload freight outbound to points as follows:

North of Wilmington, Del., to Morrisville, Pa., inclusive, East of Pittsburgh, Pa.; Buffalo, N. Y.; and Erie, Pa.; exclusive to all points in Pennsylvania and New York States, routing via junction points on or west of line Philadelphia and north to Pottsville and Wilkes-Barre, Pa.; including points on the Delaware & Hudson Co. and connections to Canadian and New England points via Wilkes-Barre; also carload freight to team track delivery inbound and outbound to and from all points.

[fols. 1061 & 1062] List of Carload Delivery Orders Filed by Individuals and Industries at Philadelphia, Pa.

All carloads, consigned to the firms named herein, must be delivered at the points shown in column headed "Destinations," unless consigned specifically to some other Pennsylvania R. R. delivery, in which case they must be forwarded to the point specified. Exceptions to the latter are designed by an asterisk (*) and in such cases the cars must be forwarded to the place named in column headed "Destination," regardless of billing.

The deliveries shown herein are understood to conform to the general instructions for the delivery of freight in Philadelphia contained in C. T. 352, City Delivery Sheets, as authorized by the general superintendent transportation.

[fols. 1063-1097]

Firm Name	Freight	Destination
Bisbee Linseed Company	Linseed Oil	Siding Greenwich Point
Blaetz, J. H.		Fairhill
Blakely & Son, John		Shackamaxon
Block Go Cart Co.		Shackamaxon
Bodenstein & Kuemmerle	Lumber	Shackamaxon
Bonsor & Co., Inc., C. F.	West of Pittsburgh and Erie, Pa.	Dock Street
Bonstedt & Co., W. G.	Canned Goods	Merchants' Warehouse Co., River Front Stores
	Cereals	
	Dried Fruit	
	Package Freight, from West of Pittsburgh and Erie (except Apples in barrels, Canned Goods, Cereals and Dried Fruit	Dock Street
	Apples in barrels	Vine Street
	Package Freight from East of Pittsburgh and Erie (except Canned Goods, Cereals and Dried Fruit	
Borden Stove Co.		Merchants' Warehouse Co., River Front Stores
Bounds, Paul W.	Stone	Fairhill
Bourne & Co., T. H.	Canned Milk	Merchants' Warehouse Co., River Front Stores
Boyer & Co.		Kensington
Bradlee & Co.		Shackamaxon
Bradley Market Co.	Hams	31st and Chestnut Streets
Bradle & Smith Co.		Kensington
Brecht's Sons, F.	Lumber	Vine Street
Bremers' Sons, L.	Leaf Tobacco	Vine Street
Brewer Co., Inc., Earnest	Flour	Philadelphia Tidewater Terminal, Washington Avenue Wharf
Brighton Worsted Co., The		Fairhill
Brody & Co., L.		Vine Street

Firm Name	Freight	Destination
Brodsky Bros.	Hide and Sheep Skins	*Tioga Street
Bromley & Sons, Inc., John		Fairhill
Brown & Bailey Co.	Paper	Vine Street
Buck, D., Estate of	Lumber	Shackamaxon
Buck, C. D.-Col. M. C. N. A.		*21st and Oregon Avenue
Buick Motor Co.	Automobiles Automobile Parts & Accessories	*12th & Glenwood Ave. No. Phila. 16th & Indiana Ave. No. Phila.
Buist Company, Robert		Vine
Bullock Bros.	Wool	Dock Street
Bunting Bedding Co., J. R.		Broad and Washington Ave.
Burk Bros.		Shackamaxon
Burns Sales Co., J. C.	Washing Machines	Broad Street and Washington Avenue
Burpee & Co., W., Atlee	Garden Seeds, Dried Peas or Beans, Corn and Potatoes	Vine Street
Burr Bros.		Shackamaxon
Burt Bros.		Broad Street and Washington Avenue
Butterworth, G. W.	Perishable Fruit	West Philadelphia Market House, 30th and Market Streets
Caldwell, Wm. K.		*Kensington
California Fruit Distributors	Perishable except grapes Grapes	West Phila. Market House, 30th & Market Streets Queen Street Yard
California Vegetable Union	Perishable except Citrus fruits Citrus Fruits	West Phila. Market House, 30th & Market Streets Vine St. Station
Caloric Gas Stove Works		Shackamaxon
Campbell, C. & J.		Fairhill
Cancelmo, A.	Oranges, Lemons, Grape Fruit, boxes of Apples and kegs of Grapes Apples in bbls.	Vine Street West Phila. Market House, 30th & Market Streets
Cancelmo, Joseph	Apples, Grape Fruit, Oranges, Lemons, boxed and kegs of Grapes	Vine Street

Cancelmo, J. B.	Perishable	West Phila. Market House, 30th & Market Streets
Carraine, Eugene	Pulp Boards	Broad Street and Washington Avenue
Carter & Co.		Merchants' Warehouse Co., River Front Stroes
Carter, Fred B.	Meats	Vine Street
Case Plow Works, J. L.		Terminal Warehouse and Transfer Co., Shackamaxon
Cass & Co., Phillip		Vine Street
Cattle Co., Wm. and Walter		31st and Chestnut Streets
Cavanna & Co., A. R.	From the West	Dock Street
	From the East	Walnut Street Wharf
	From other points	Vine Street
Central News Company	Magazines	Broad Street and Washington Ave.
Chambers Bros. Co.	Sand, Iron and Machinery	52nd Street
	Perishable except Citrus Fruits	West Philadelphia Market House
Chase & Company	Citrus Fruits	Vine Street
Cherry Bassett Winner Co.		31st and Chestnut Streets

[fol. 1098] EXHIBIT No. 101

Reading Company, Freight Traffic Department, Reading Terminal, Philadelphia, Pa.

Circular No. 225 (Cancels Circular No. 215, Dated April 15, 1920)

Containing

A list of manufacturers, merchants, public storage houses and grain elevators having siding connection with Reading Company; parties not having siding connection who receive all their carload freight at certain specific stations; freight stations in Philadelphia; track scales and cranes, showing their location in Philadelphia.

Issued by

H. C. Stauffer, Freight Traffic Manager; J. W. Hewitt, Assistant Freight Traffic Manager; R. C. Campbell, General Freight Agent; L. R. Jones, Assistant General Freight Agent; B. M. Croll, Division Freight Agent; J. A. Fisher, Foreign Freight Agent; W. H. Whitehead, Comptroller.

Philadelphia, Pa., November 1, 1926.

(Mailing List No. 225.)
Files 249710—249940.

[fols. 1099-1101] Reading Company, Freight Traffic Department, Reading Terminal, Philadelphia, Pa.

Circular No. 225 (Cancels Circular No. 215, Dated April 15, 1920)

To Agents and Connections:

In every instance, freight consigned to parties located in the Philadelphia District should be consigned to the specific station at which the delivery is desired. Such information should appear on the bills of lading and waybills. This will prevent delay in accomplishing the delivery, as well as unnecessary switching and incidentally, possible overcharge resulting from failure to indicate the station at which the delivery is required.

To illustrate this: Frequently cars are waybilled to "Philadelphia," yet bill of lading was issued to shipper reading "Lehigh Avenue, Philadelphia," or to some other outlying station. As the general points of delivery for cars consigned simply to "Philadelphia," is Broad and Callowhill Streets or Willow and Noble Streets stations, failure to incorporate the specific station delivery on the waybill necessitates additional switching in order to make the delivery required under the terms of the bill of lading.

In Section 1, of this Circular, there is a complete list of names of firms, corporations, etc., who have siding connection with the Reading Company in the Philadelphia District, including the location; and in Section 2 there is an additional list of parties who are receiving their carload shipments at certain specific stations.

Where bills of lading do not provide for the specific station delivery you should be governed by the information below in waybilling shipments:

Carload shipments consigned to parties whose names do not appear in this list, and where no specific station delivery in Philadelphia is named in the bill of lading, will be delivered at either Broad and Callowhill Streets Station or Willow and Noble Streets Station as the railway company may determine.

For additional information regarding sidings, facilities, deliveries, etc., at Philadelphia, consult B. M. Croll, Division Freight Agent, Reading Terminal, Philadelphia, Pa.

For additional information regarding coastwise or export traffic, consult J. A. Fisher, Foreign Freight Agent, Reading Terminal, Philadelphia, Pa.

(Here follow photostats of side folios 1102 and 1103 & 1104.)

PUBLIC STORAGE HOUSES IN PHILADELPHIA
REACHED BY READING COMPANY

Name or usual designation of Public Storage House	Location in Philadelphia	Reading Company Station in Philadelphia to which CARLOADS must be way-billed and car-carded
Bailey Warehouses	Swanson and Morris Sts.	Willow and Noble Streets
Delaware Storage and Freezing Co.	Atherican and Willow Sts.	Willow and Noble Streets
△ ⓓ Godley's Stores	Delaware Avenue and Almond Sreets	Willow and Noble Streets
Industrial Cold Storage and Warehouse Co.	American and Berks Sts.	Second and Berks Streets
Interstate Warehouse Co.	919-925 North Front St.	Willow and Noble Streets
△ Northeastern Warehouse Co.	Sedgley and Erie Avenues	Erie Avenue
Penna. Warehousing & Safe Deposit Co., viz.:		
△ ⓓ Atlantic Stores	Delaware Avenue and Catherine Street	Willow and Noble Streets
Delaware Avenue Stores Nos. 1, 2 and 3	Delaware Avenue and Lombard Street	Willow and Noble Streets
△ Equitable Warehousing Co.	5th and Willow Streets	Willow and Noble Streets
Gallagher's Almond Street Warehouse	Delaware Avenue and Kenilworth Street	Willow and Noble Streets
Moro-Philips Store	Delaware Avenue and Fitzwater Street	Willow and Noble Streets
△ ⓔ Pennsylvania Stores	Front and Lombard Streets	Willow and Noble Streets
△ Pennsylvania Tobacco Stores	404-406-408 South Water Street	Willow and Noble Streets
Poplar Street Stores	Delaware Ave. and Poplar Street	Port Richmond
Port Richmond Stores	Richmond and East Cambria Streets	Port Richmond
Sixteenth Street Stores	Sixteenth and Callowhill Streets	Broad Street
△ ⓓ West India Stores	Delaware Avenue and Catherine Streets	Willow and Noble Streets
Philadelphia Warehousing & Cold Storage Co.	Delaware Avenue and Noble Street	Willow and Noble Streets
Quaker City Cold Storage Co.	Delaware Avenue and Pine Street	Willow and Noble Streets
Rex & Co.'s Warehouse	American Street above York Street	Lehigh Avenue
River Front Stores	Delaware Avenue and Chestnut Street	Willow and Noble Streets
Terminal Warehouse and Transfer Co.	Delaware Avenue and Green Street	Willow and Noble Streets
Wash'n Bonded Terminal Warehouse	Delaware Avenue and Walnut Street	Willow and Noble Streets

△ Indicates U. S. Bonded Warehouse.
ⓓ No direct siding connection. Cars placed for delivery at Almond Street Yard.
ⓔ No direct siding connection. Cars placed for delivery through siding of Delaware Avenue Stores Nos. 1, 2 and 3 or Almond Street Yard.

When storage warehouse delivery is required, the name of the storage warehouse must be shown in the proper space for such information on car card waybill issued to the station in Philadelphia which is shown opposite thereto.

GRAIN ELEVATORS IN PHILADELPHIA
REACHED B. READING COMPANY

KIND	NAME	Location in Philadelphia	Reading Company Station in Philadelphia to which CARLOADS must be way-billed and car-carded
Domestic Grain Elevator	20th Street Elevator	20th and Hamilton Sts.	Broad Street
Export Grain Elevator	Port Richmond Elevator	Beach and Clearfield Sts.	Port Richmond

PHILADELPHIA CITY DELIVERIES
READING COMPANY

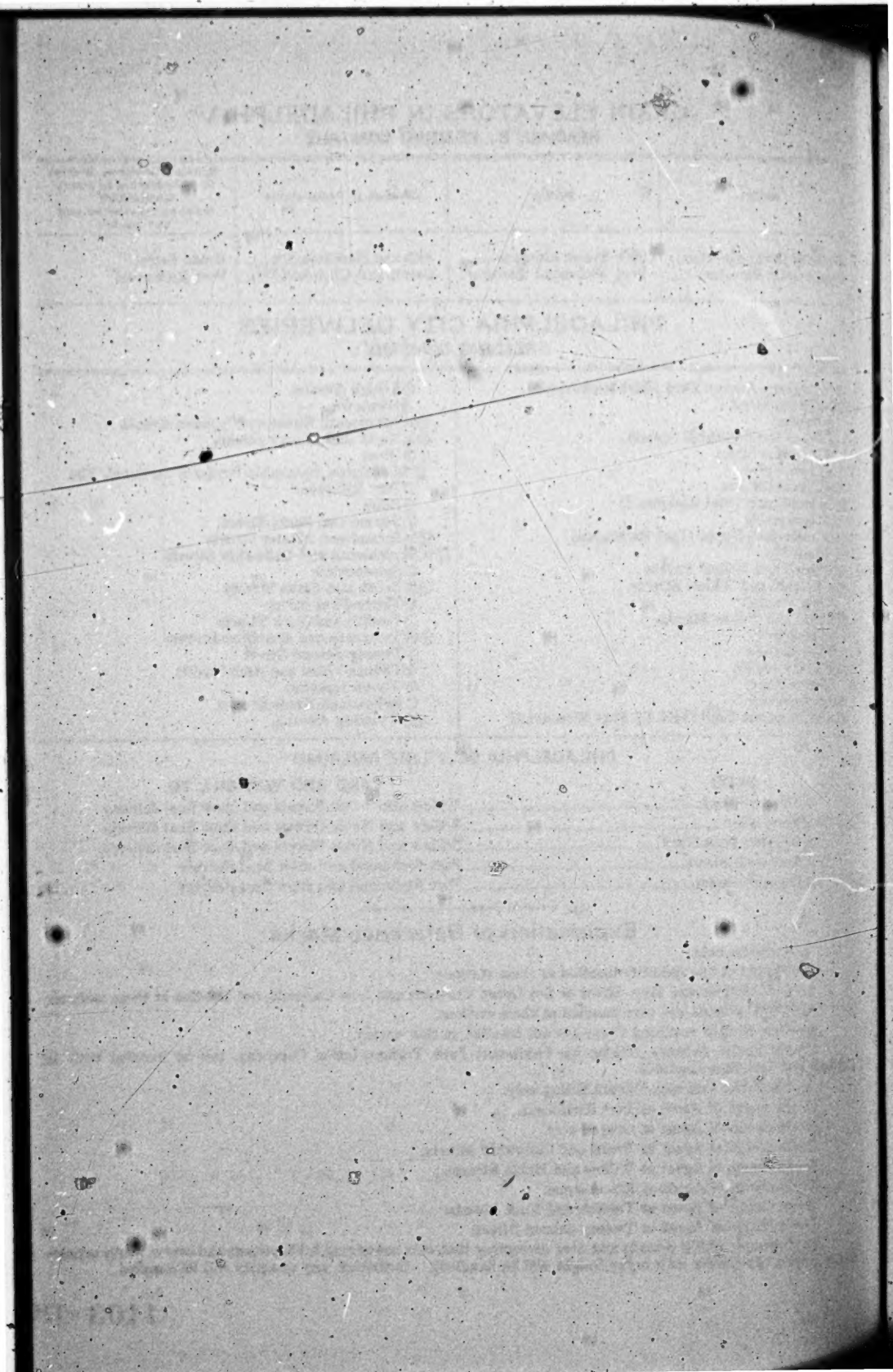
⑥×Allegheny Avenue Yard (Port Richmond)
⑥×Almond Street
Ø Belmont
⊙Broad and Callowhill Streets
⊙¶Catharine Street
×Cedar Grove
⊙¶Chestnut Street
①⊙Coral Street (Port Richmond)
×‡Crescentville
①⊙Cumberland Street (Port Richmond)
⑥‡Eastwicks
⑥×Eighth and Willow Streets
⑥×Eleventh and Willow Streets
⊙Erie Avenue
⑥×Fifth and Willow Streets
⊙Frankford
⊙Germantown
⑥‡Gibson's Point
‡Grays Ferry
⑥⊙Greenmount
①×Laurel Street Yard (Pier 43, Port Richmond)
⊙Lehigh Avenue
‡Nicetown
⑦×Nineteenth Street and Indiana Avenue
④×Ninth and Master Streets
⊙Olney
‡Philadelphia Perishable Products Terminal, The
⊙Port Richmond
⊙Sears
⊙Second and Berks Streets
④×Second and Master Streets
⑤×Seventeenth and Callowhill Streets
⊙Summerdale
⑧×Tenth and Berks Streets
⊙Thirty-First Street
⊙Twelfth and York Streets
⑧⊕Twentieth and Hamilton Streets
⊙Twenty-Second Street
③Twenty-Third and Arch Streets
⊙Wayne Junction
⊙Willow and Noble Streets
⑨‡Wyoming Avenue

PHILADELPHIA BELT LINE RAILROAD

YARD	CARD AND WAY-BILL TO
×Almond Street	Willow and Noble Streets and show final delivery
×Mead Alley	Willow and Noble Streets and show final delivery
×Wharton Lane Yard	Willow and Noble Streets and show final delivery
×Kettlewell Street	Port Richmond and show final delivery
×Reynolds Street	Port Richmond and show final delivery

Explanation of Reference Marks

‡—Carloads only.
⊙—Freight in any quantity handled at these stations.
¶—Bulk Freight and Hay, Straw or Sea Grass, Carloads and Less Carloads, not handled at these stations.
×—12,000 pounds and over handled at these stations.
⊕—Only Freight requiring Crane Service handled at this station.
Ø—No Public Delivery, Traffic for Fairmount Park Transportation Company, can be handled both in Carloads and Less than Carloads.
‡—No Public Delivery, Private Siding only.
①—In charge of Agent at Port Richmond.
②—In charge of Agent at Grays Ferry.
③—In charge of Agent at Broad and Callowhill Streets.
④—In charge of Agent at Willow and Noble Streets.
⑤—In charge of Agent at Erie Avenue.
⑥—In charge of Agent at Twelfth and York Streets.
⑦—In charge of Agent at Twenty-Second Street.
⑨—Inbound, 10,000 pounds and over (excepting that cars containing 6,000 pounds and over of heavy articles and cars filled to capacity with bulky freight will be handled). Outbound, any quantity will be handled.



[fols. 1105-1110] Individual Sidings in Philadelphia Served by Reading Company

Name of firm or corporation	Character of business	Street location	Waybill to
Abbott A., Theo.	Cloth	23d Street and Allegheny Avenue	22d Street
Abramson, Louis	Coal	1429 North American Street	2d and Berks Streets
Accommodation Ice & Coal Co.	Coal and Ice	1133 West Louden Street	Erie Avenue
Aetna Foundry Co.	Castings	20th and Ruffner Streets	Nicetown
Allegheny Scrap Iron & Metal Co.	Scrap Metal	2d and Clearfield Streets	Port Richmond
Allen & Co., S. L.	Agricultural Implements.	5th Street and [illegible]enwood Avenue	Erie Avenue
Almar Stores Co.	Groceries	915-925 North Front Street	Willow and Noble Streets
American Can Co.	Cans	Beach and Palmer Streets	Port Richmond
American Cone & Pretzel Co.	Pretzels	10th Street and Susquehanna Avenue	12th and York Streets
American Engineering Co.	Machinery	Aramingo and Cumberland Streets.	Port Richmond
American Fabricated Steel Co.	Iron and Steel	2442 Bodine Street	Lehigh Avenue
American Ice Co.	Ice	3rd and Cambria Streets	Lehigh Avenue
American Ice Co.	Ice	9th and Jefferson Streets	12th and York Streets
American Ice Co.	Ice	22d Street, below Westmoreland St.	22d Street
American Ice Co.	Ice and Coal	Belfield Avenue and Walnut Lane	Germantown
American Ice Co.	Ice, Coal and Hay	Armat Street and Reading Ry.	Germantown
American Mfg. Co.	Cordage	Front and Shunk Streets	Willow and Noble Streets
American Oil Co.	Oil and Gasoline	6th and Annsbury Streets	Erie Avenue
American Preserve Co.	Preserved Fruits	3rd and Lehigh Avenue	Lehigh Avenue
American Pulley Co.	Steel Pulleys	4200 Wissahickon Avenue	Nicetown
American Stores Co.	Retail Grocers	York Avenue and Willow Street	Willow and Noble Streets
American Stores Co. (Bells Siding Warehouse No. 3.)	Retail Grocers	963 Hancock Street	Willow and Noble Streets
American Stores Co., Branch No. 2 (Robinson & Crawford Siding)	Retail Grocers	19th Street and Pennsylvania Ave.	Broad Street
American Stores Co. (Philadelphia Warehouse No. 4)	Retail Grocers	32d and Master Streets	31st Street
American Stores Co. (Warehouse, 31st and Thompson Streets)	Groceries	31st and Thompson Streets	31st Street
Animal Oil Co.	Oils	Ontario below Richmond Street	Port Richmond
Armour & Co.	Dressed Meats	213 W. Norris Street	2d and Berks Streets
Armour & Co.	Dressed Meats	917 Noble Street	Broad Street

Individual Sidings in Philadelphia Served by Reading Company—Continued

Name of firm or corporation	Character of business	Street location	Waybill to
Arnholt & Schaefer Brewing Co....	Brewers	31st and Thompson Streets.....	31st Street
Atlantic Cooperage Co.....	Cooperage	Swanson and Wolf Streets.....	Willow and Noble Streets
Atlas Whiting Co.....	Whiting	Commerce and Huntingdon Streets..	Port Richmond
Ault & Wiborg Co.....	Inks	32d and Master Streets.....	31st Street.
Baeder, Adamson & Co.....	Blue, Hair, etc.....	Richmond Street and Allegheny Ave.	Port Richmond
Bailey Warehouse.....	Storage	Delaware Avenue and South Street.	Willow and Noble Streets
Baldwin Locomotive Works.....	Locomotives	Penna. Avenue, Broad to 18th Sts..	Broad Street
[fols. 1111-1113]			
Holland Furnace Co.....	Furnaces	23d and Arch Streets.....	23rd and Arch Streets
Hoopes & Townsend Co.....	Bolts and Nuts.....	13th and Buttonwood Streets.....	Broad Street
Horrocks, W. B., Co.....	Coal, Lime and Building Material	Othodox Street and Reading Ry....	Frankford
Houghton & Co., E. F.....	Oils	American and Somerset Streets....	Lehigh Avenue
Household Supply Co.....	Furniture	Belber Bldg., 22d and Arch Streets	23d and Arch Streets
Hughes & Patterson.....	Rolling Mill	1701 North Delaware Avenue.....	Port Richmond
Independent Pier Co.....	Wharfage	Piers 28-34-35, South Wharves.....	Willow and Noble Streets
Industrial Cold Storage and Warehouse Co.....	Cold Storage	American and Berks Streets.....	2d and Berks Streets
Janney Lumber Co., J. W.....	Lumber	Pier 52, North Wharves.....	Port Richmond
Jarka Corp. of Phila.....	Stevedores	Pier 19, North Wharves.....	Willow and Noble Streets

Jefferson Ice Co.	Ice	American and Cumberland Streets.	Lehigh Avenue
Johnson & Company, Charles Eneu.	Inks	Swanson Street below Wolf Street..	Willow and Noble Streets
Johnson & Co., Inc., J. D.	Plumbers' Supplies	6th Street and Glenwood Avenue...	Port Richmond
Johnson Co., The	Furniture	Gaul and Letterly Streets	Port Richmond
Jones Coal & Lumber Co.	Coal and Lumber	229 Church Street	Germantown
Kane Mfg. Co.	Glues	Delaware Avenue and Morris Street	Willow and Noble Streets
Kay Mfg. Co.	Springs	1027 Germantown Avenue	Willow and Noble Streets
Kensil Coal Co.	Coal	10th Street and Rising Sun Avenue	Nicetown
Kerr, Bro. & Co., Alex.	Salt	520 North Delaware Avenue	Willow and Noble Streets
Kerr Heuftle Coal Co.	Coal	17th Street below Indiana Avenue...	22d Street
Keystone Brick Co.	Brick	Tabor Road and Godfrey Avenue...	Summerdale
Keystone Lead Co. (Brodskey's Siding)	Lead	Ontario Street below Richmond St..	Port Richmond
Keystone State Const. Co.	Contractors	Ridge Avenue and Noble Street	Broad Street
Keystone Supply & Manufacturing Co.	Plumbers' Supplies	927 North 9th Street	12th and York Streets
Kingan Provision Co.	Coal (only)	8th and Callowhill Streets	Broad Street
Kingan Provision Co.	Meats and Provisions	8th and Callowhill Streets	Willow and Noble Streets
Klebe & Co., L. & J.	Coal	11th and Dauphin Streets	12th and York Streets
Koch, Christopher	Cooperage Stock	McKean and Swanson Streets	Willow and Noble Streets
Kohler, W. F.	Coal	6th and Cayuga Streets	Erie Avenue
Lansing & Co.	Trucks and Barrows	American and Willow Streets	Willow and Noble Streets
Larue & Co., Charles T.	Hardwood Flooring	20th Street and Erie Avenue	Nicetown
Latta & Roberts	Contractors	Delaware Avenue and Ontario St..	Port Richmond

Individual Sidings in Philadelphia Served by Reading Company—Continued

[fol. 1114]

Name of firm or corporation	Character of business	Street location	Waybill to
Norris Market Ice Manufacturing & Cold Storage Co.	Ice and Cold Storage	3d and Norris Streets	2d and Berks Streets
North Bros. Manufacturing Co.	Ice Cream Freezers	American Street and Lehigh Avenue	Lehigh Avenue
Northeast Builders' Supply Co.	Sand, Lime, Cement, Etc.	2d Street and Fisher's Avenue	Olney
Northeastern Warehouse Co.	Storage	Sedgely and Erie Avenues	Erie Avenue
Northern Coal Co.	Coal	1065 Germantown Avenue	Willow and Noble Streets
Northern Liberties Gas Co.	Gas Works	Canal Street, near Laurel Street	Port Richmond
Northern Metal Company	Scrap Iron	Lawrence and Pike Streets	Erie Avenue
North Philadelphia Lumber Co.	Lumber	5th and Lycoming Streets	Erie Avenue
Novelty Coal Co.	Coal	1429 North American Street	2d and Berks Streets
O'Donnell, N. & H.	Cooperage Stock	Swanson and Moore Streets	Willow and Noble Streets
Ohrle Bros.	Upholstery Trimming (Coal only)	American and Willow Streets	Broad Street
Olney Ice & Coal Co. (Petri Bros.)	Ice and Coal	Duncannon Avenue and Mascher St.	Olney
Ornoka Mills Co.	Cloth Manufacturers	Ruth and Somerset Streets	Port Richmond
Pacific Mutual Door Co.	Doors	Roberts Avenue and Fox Street	Nicetown
Paist, F. M.	Candy	American and Jefferson Streets	2d and Berks Streets
Pancoast Co., Henry B.	Heating	Front and Ellen Streets	Willow and Noble Streets
Paper Manufacturers Co., Inc.	Paper Specialties	5th and Willow Streets	Willow and Noble Streets
Paramount Lumber Co.	Lumber	American and Cumberland Streets.	Lehigh Avenue
Patterson Coal Co., Inc.	Coal	1023 Susquehanna Avenue	12th and York Streets
Peal, Ogden	Coal	East Falls	East Falls
Pearson Ludascher Lumber Co.	Lumber	Foot of Westmoreland St., Del. River	Port Richmond
Pecora Paint Co.	Paint Works	3d Street and Sedgley Avenue	Erie Avenue

Penn Grain & Feed Co.	Feed	32d and Thompson Streets	31st Street
Penna. Brick & Tile Co.	Brick	Westmoreland St. and Delaware Ave.	Port Richmond
Penna. Copper Reduction Co.	Smelters	Delaware Avenue and Buckius St.	Port Richmond
Penna. Forge Co.	Forgings	Delaware Avenue and Buckius St.	Port Richmond
Penna. Globe Gas Light Co.	Gas Fixtures	9th Street and Sedgely Avenue	Port Richmond
Penna. Salt Mfg. Co.	Salt	Greenwich Point	Noble Street
Pennsylvania Sugar Co.	Cooperage	Delaware Avenue and Laurel Street	Port Richmond
Pennsylvania Sugar Co.	Sugar	Delaware Ave. and Shackamaxon St.	Port Richmond
Penna. Warehousing & Safe Deposit Co. viz.:			
Delaware Ave. Stores Nos. 1, 2 and 3	Storage	Delaware Avenue and Lombard St.	Willow and Noble Streets
Moro-Phillips Stores	Storage	Delaware Avenue and Fitzwater St.	Willow and Noble Streets
Pennsylvania Tobacco Stores	Storage	404-406-408 South Water Street	Willow and Noble Streets
Pennsylvania Stores	Storage	Front and Lombard Streets	Willow and Noble Streets
Port Richmond Stores	Storage	Richmond and East Cambria Streets	Port Richmond
Sixteenth Street Stores	Storage	16th and Callowhill Streets	Broad Street
Petri Bros. (Olney Ice & Coal Co.)	Ice and Coal	Duncannon Avenue and Mascher St.	Olney
Pettinos, George F.	Foundry Supplies	American St. and Susquehanna Ave.	2d and Berks Streets

[fol. 1115]

Philadelphia Asbestos Co.	Asbestos Products	Roberts Street and Pulaski Avenue	Wayne Junction
Philadelphia Bag Co.	Bags	Water and Dickinson Streets	Willow and Noble Streets
Philadelphia Brewing Co.	Brewery	6th and Clearfield Streets	Port Richmond
Philadelphia Builders Supply Co.	Sand, Lime, Cement, etc.	2d and Wellens Avenue	Olney
Philadelphia Electric Co.	Lighting	Beach and Palmer Streets	Port Richmond
Philadelphia & Reading Coal & Iron Co.	Coal	11th and Willow Streets	Broad Street
Philadelphia Grain Elevator Co.	Grain Elevator	Port Richmond, Pier B	Port Richmond
Philadelphia Grain Elevator Co.	Grain Elevator	20th Street and Penna. Avenue	Broad Street
Philadelphia Grain Elevator Co.	Grain Elevator	29th and Parrish Streets	Broad Street
Philadelphia Hardwood Flooring Co.	Lumber	33d and Master Streets	31st Street

Individual Sidings in Philadelphia Served by Reading Company—Continued

Name of firm or corporation	Character of business	Street location	Waybill to
Philadelphia Pipe Bending Co....	Pipe Bends.....	4145 North Fifth Street.....	Erie Avenue
Philadelphia Rapid Transit Co....	Car Barn.....	10th and Luzerne Streets.....	Nicetown
Philadelphia Rapid Transit Co....	Street Railway.....	Pier 42, North Delaware Avenue...	Port Richmond
Philadelphia Rapid Transit Co....	Supply Yard.....	2d Street and Wyoming Avenue....	Erie Avenue
Philadelphia Rapid Transit Co....	Supply Yard.....	2d Street and Lehigh Avenue.....	Lehigh Avenue
Philadelphia Rapid Transit Co....	Storage	Pier 34, North Delaware Avenue...	Port Richmond
Philadelphia Roll & Machine Co...	Iron and Steel.....	52d Street and Grays Avenue.....	Eastwicks
Philadelphia Ship Repair Co.....	Ship Repairs.....	Mifflin Street Wharf.....	Willow and Noble Streets
Phila. Warehousing & Cold Storage Co.	Storage	Delaware Avenue and Noble Street.	Willow and Noble Streets
Pier 9 North Wharves.....	Municipal	Race Street.....	Willow and Noble Streets
Pilling & Son Co., G. P.....	Surgical Instruments....	23d and Arch Streets.....	23d and Arch Streets
Pneumatic Conveyer Co.....	Conveyers	Greenwich	Willow and Noble Streets
Pooley Furniture Co.....	Furniture Factory.....	17th Street and Indiana Avenue....	22d Street
Pottash Bros.....	Bagging and Burlap.....	Swanson and Wolf Streets.....	Willow and Noble Streets
Powers-Weightman-Rosengarten Co.	Chemicals	9th and Parrish Streets.....	12th and York Streets
Powers-Weightman-Rosengarten Co.	Chemicals	East Falls.....	East Falls
Premier Spring Bed Co.....	Beds	12th and Noble Streets.....	Broad Street
Proctor & Schwartz.....	Drying Machines.....	6th Street and Tabor Road.....	Erie Avenue
Publicker Commercial Alcohol Co...	Distilling	Snyder Avenue and Water Street..	Willow and Noble Streets
Quaker City Cold Storage Co.....	Storage	Water and Spruce Streets.....	Willow and Noble Streets
Queen City Printing Co.....	Printing Inks.....	1061 Germantown Avenue.....	Willow and Noble Streets
Quinn, Joseph P., Est.....	Marble	30th and Thompson Streets.....	31st Street
Rabin Coal Company.....	Coal	1526 North American Street.....	2d and Berks Streets
Randall Coal Co.....	Coal	6th and Ruscomb Streets.....	Erie Avenue
Reading Bone Fertilizer Co.....	Fertilizer	Pier 92, South.....	Willow and Noble Streets
Rebman Real Estate Co.....	Coal	1234 Hamilton Street.....	Broad Street
Reinecker & Schweigler.....	Coal	1401 American Street.....	2d and Berks Streets
Reiner & Co., John F.....	Soaps	American and York Streets.....	2d and Berks Streets
Remington & Sherman Co.....	Safes	1545 North Delaware Avenue.....	Port Richmond

[fols. 1116-1153]

Remmey & Son, R. C.	Fire Brick	Hedley and Richmond Streets	Port Richmond
Rex & Co.	Storage	American and York Streets	Lehigh Avenue
Reyburn Manufacturing Co.	Paper Tags	23d Street and Allegheny Avenue	22d Street
Reynolds Lumber Co.	Flooring	American and York Streets	Lehigh Avenue
Richmond Radiator Co.	Heating	2241 North American Street	2d and Berks Streets
Ridgway & Sons, B.	Stone	Clarissa and Bristol Streets	Nicetown
Rising Sun Ice & Coal Co.	Ice and Coal	11th and Dauphin Streets	12th and York Streets
Risser & Rapinowitz	Poultry	Delaware Avenue and Mifflin Street	Willow and Noble Streets
River Front Stores	General Stores	Chestnut Street and Delaware Avenue	Willow and Noble Streets
Riverside Glue Works	Glue and Sand Paper	Richmond Street and Allegheny Avenue	Port Richmond
Rockland Ice & Coal Co.	Coal	1822 Juniata Street	Nicetown
Rogers, C. M.	Coal	12th and Callowhill Streets	Broad Street
Ross & Wilson	Coal	American and Cumberland Streets	2d Street and Lehigh Avenue
Russell, Henry	Coal	Water Street and Clarkson Avenue	Olney
Ryan & Co.	Coal	12th and Wollow Streets	Broad Street
S. & S. Water Co.	Soft Drinks	31st and Thompson Streets	31st Street
Sauquoit Silk Manufacturing Co.	Silk Yarn	Clarissa Street and Hunting Park Avenue	Nicetown
Sawdust Sales Co.	Sawdust	20th and Clearfield Streets	22d Street
Scargle's Sons, W. W.	Coal	5th Street and Rising Sun Avenue	Erie Avenue
Scheidt Brewing Co., Adam	Bottling Works	963 North Ninth Street	12th and York Streets
Scheinert Co., R.	Electrical Machinery	Gaul and Letterly Streets	Port Richmond
Schmidt's Sons Brewing Co., C.	Brewery	2d and Edwards Streets	Willow and Noble Streets
Schoble & Co., Frank	Hats	9th and Oxford Streets	12th and York Streets
Schreiber, Jacob	Bottling Works	2525 North Broad Street	12th and York Streets
Schuylkill Forge & Steel Co.	Forgings	3d and Luzerne Streets	Erie Avenue
Schwacke, Herman	Autos	20th and Hamilton Streets	Broad Street
Scott & Co., John	Wholesale Grocers	2101 North American Street	2nd and Berks Streets
Scullion, Simon	Iron Foundry	American and Cambria Streets	Lehigh Avenue
Sears, Roebuck & Co.	Warehouse	Roosevelt Boulevard	Sears
Seeds & Derham	Contractors	26th and Penna. Avenue	31st Street

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Name of firm or corporation	Character of business	Street location	Waybill to
Sellers & Co., Incorporated, Wm....	Machinery	1600 Hamilton Street.....	Broad Street
Service Supply Corp.....	Hardware and Contractor Supplies.....	20th and Venango Streets.....	Nicetown
Shoemaker & Co. (Limited), M. L..	Fertilizer	Venango Street and Delaware Avenue.....	Port Richmond
Silberman, J.....	Barrels	Swanson and Mifflin Streets.....	Willow and Noble Streets
Sinclair Refining Co.....	Petroleum	Swanson and Dudley Streets.....	Willow and Noble Streets
Sixteenth Street Stores.....	Storage	16th and Callowhill Streets.....	Broad Street
Smallman & Co., John.....	Coal and Feed.....	Miller Street and Lehigh Avenue..	Port Richmond
Smith, Geo. W., & Co.....	Woodworking Mfg.....	[illegible]th Street and Gray's Ferry Avenue	Gray's Ferry
Smith, H. J. & A., Co.....	Coal	Jasper Street and Lehigh Avenue..	Port Richmond
Smith, Kline & French Co.....	Druggists	Beach and Poplar Streets.....	Port Richmond
Snedaker & Co., F. C.....	Wood Workers.....	9th and Tioga Streets.....	Nicetown

[fol. 1154] IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

In Equity. No. 5789

In Equity. No. 5791

[Titles omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 7, 1931

To the Clerk:

Please prepare a transcript of the record in the above entitled causes in the matter of appeals therein, and include in said transcript, in the order given below, the following matter, viz:

In Number 5781

1. Petition of Merchants Warehouse Company as amended.

[fol. 1155] 2. Order of February 17th, 1930, fixing February 21st, 1930, as the date for hearing application for a temporary stay, (modified so as to show the name of District Judge Oliver B. Dickinson instead of District Judge William H. Kirkpatrick).

3. Petition of James Gallagher, et al., for leave to intervene as defendants, and order granting same.

4. Decree of February 21st, 1930, granting temporary stay of the order of the Interstate Commerce Commission.

5. Answer of James Gallagher, et al., intervening Defendants.

6. Answer of Interstate Commerce Commission.

7. Petition of Commercial Exchange of Philadelphia, et al. for leave to intervene as Plaintiffs, and order granting same.

8. Answer of United States of America.

9. Order amending order of February 17th, 1930, by substituting the name of Circuit Judge Joseph Buffington for Circuit Judge Victor B. Woolley.

10. Decree of April 15, 1930, continuing temporary stay of order of Interstate Commerce Commission.

11. Opinion of the Court filed October 8th, 1930.

12. Court's findings of fact and conclusions of law.

13. Exceptions to findings of fact and conclusions of law.

14. Petition for order staying enforcement of Commission's order pending appeal.

15. Answer of United States of America to petition for stay of Commission's order pending appeal.

16. Answer of Commission to petition for stay order pending appeal.

17. Answer of intervening defendants to petition for stay order pending appeal.

18. Opinion of court "sur petition for order of super- [fol. 1156] sedeas", granting stay of Commission's order pending appeal.

19. Final decree filed November 19th, 1930.

20. Petition for appeal, assignment of errors and prayer for reversal.

21. Citation on appeal of Merchants Warehouse Company.

22. Petition of Commercial Exchange of Philadelphia, et al. for appeal, assignment of errors, and prayer for rever-al.

23. Citation on appeal of Commercial Exchange of Philadelphia, et al.

24. Order allowing appeal of Commercial Exchange of Philadelphia, et al.

25. Appeal Bond.

26. Notice to Attorney General of Pennsylvania of appeal.

27. Order allowing appeal of Merchants Warehouse Company and staying Commission's order pending appeal.

28. Petition for cross-appeal.

29. Assignment of errors on cross-appeal.

30. Order allowing cross-appeal.

31. Citation on cross-appeal.

32. Notice to Attorney General of Pennsylvania of cross-appeal.

33. Order extending time for docketing case on appeal.

34. Stipulation in re statement of evidence.

35. Order approving statement of evidence.

36. This praecipe.

37. Journal entries in their proper order.

In Number 5789

1. Petition of The Pennsylvania Warehousing and Safe Deposit Company.

[fol. 1157] 2. Order of February 17th, 1930, fixing February 21st, 1930, as the date for hearing application for a temporary stay, (modified so as to show the name of District Judge Oliver B. Dickinson, instead of District Judge William H. Kirkpatrick).

3. Petition of James Gallagher, et al. for leave to intervene as defendants, and order granting same.

4. Decree of February 21st, 1930, granting temporary stay of the order of the Interstate Commerce Commission.

5. Answer of James Gallagher, et al. intervening defendants.

6. Answer of Interstate Commerce Commission.

7. Petition of Commercial Exchange of Philadelphia, et al. for leave to intervene as plaintiffs, and order granting same.

8. Answer of United States of America.

9. Order amending order of February 17th, 1930, by substituting the name of Circuit Judge Joseph Buffington for Circuit Judge Victor B. Woolley.

10. Decree of April 15th, 1930, continuing temporary stay of order of Interstate Commerce Commission.

11. Opinion of the Court filed October 8th, 1930.

NOTE.—This is the identical Opinion described in Item 11th of the documents in No. 5781, and is here incorporated by reference thereto (See original page —; Printed page —).

12. Court's findings of fact and conclusions of law.

NOTE.—This is the identical document described in Item 12th of the documents in No. 5781, and is here incorporated by reference thereto, (See original page —; Printed page —).

13. Exceptions to findings of fact and conclusions of law.

NOTE.—This is the identical document described in Item 13th of the documents in No. 5781, and is here incorporated by reference thereto, (See original page —; Printed page —).

[fol. 1158] 14. Opinion of Court "sur petition for order of supersedeas", granting stay of Commission's order pending appeal.

NOTE.—This is the identical Opinion described in Item 18th of the documents in No. 5781 and is here incorporated by reference thereto, (See original page —; Printed page —).

15. Final decree filed November 19th, 1930.

NOTE.—This is the identical Decree described in Item 19th of the documents in No. 5781, and is here incorporated by reference thereto, (See original page —; Printed page —).

16. Petition for appeal, assignment of errors and prayer for reversal.

17. Citation on appeal of Pennsylvania Warehousing and Safe Deposit Company.

18. Petition of Commercial Exchange of Philadelphia, et al. for appeal, assignment of errors and prayer for reversal.

19. Citation on appeal of Commercial Exchange of Philadelphia, et al.

20. Order allowing appeal of Commercial Exchange of Philadelphia, et al.

21. Appeal Bond.

22. Notice to Attorney General of Pennsylvania of Appeal.

23. Order allowing appeal of Pennsylvania Warehousing and Safe Deposit Company and staying Commission's order pending appeal.

24. Petition for cross-appeal.

25. Assignment of errors on cross-appeal.

26. Order allowing cross-appeal.

27. Citation on cross-appeal.

28. Notice to Attorney General of Pennsylvania of cross-appeal.

29. Orders extending time for docketing case on appeal.

NOTE.—These are the identical orders described in Item [fol. 1159] 33rd of the documents in No. 5781, and is here incorporated by reference thereto, (See original page —); Printed page —).

30. Stipulation in re statement of evidence.

NOTE.—This is the identical Stipulation described in Item 34th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

31. Order approving statement of evidence.

NOTE.—This is the identical order described in Item 35th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —.)

32. This præcipe.

33. Journal entries in their proper order.

In Number 5791

1. Petition of Philadelphia Warehousing and Cold Storage Company.

2. Order of February 17th, 1930, fixing February 21st, 1930, as the date for hearing application for a temporary stay, (modified so as to show the name of District Judge Oliver B. Dickinson instead of District Judge William H. Kirkpatrick).

3. Petition of James Gallagher, et al. for leave to intervene as Defendants, and order granting same.

4. Decree of February 21st, 1930, granting temporary stay of the order of the Interstate Commerce Commission.

5. Answer of James Gallagher, et al. intervening defendants.

6. Answer of Interstate Commerce Commission.

7. Petition of Commercial Exchange of Philadelphia, et al. for leave to intervene as plaintiffs, and order granting same.

8. Answer of the United States of America.

9. Order amending order of February 17th, 1930, by [fol. 1160] substituting the name of Circuit Judge Joseph Buffington for Circuit Judge Victor B. Woolley.

10. Decree of April 15th, 1930, continuing temporary stay of order of Interstate Commerce Commission.

11. Opinion of the Court filed October 8th, 1930.

NOTE.—This is the identical Opinion described in Item 11th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

12. Court's findings of fact and conclusions of law.

NOTE.—This is the identical document described in Item 12th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

13. Exceptions to findings of fact and conclusions of law.

NOTE.—This is the identical document described in Item 13th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

14. Petition for order staying enforcement of Commission's order pending appeal.

15. Answer of the United States of America to Petition for stay of Commission's order pending appeal.

16. Answer of the intervening defendants to petition for stay order pending appeal.

17. Opinion of Court "sur petition for order of supersedeas, granting stay of Commission's order pending appeal.

NOTE.—This is the identical Opinion described in Item 18th of the documents in No. 5781, and is here incorporated by reference thereto. (See Original page —; Printed page —).

18. Final decree filed November 19th, 1930.

NOTE.—This is the identical Decree described in Item 19th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; printed page —).

19. Petition for appeal, assignment of errors and prayer for reversal.

[fol. 1161] 20. Citation on appeal of Philadelphia Warehousing and Cold Storage Company.

21. Petition of Commercial Exchange of Philadelphia et al. for appeal, assignment of errors and prayer for reversal.

22. Citation on appeal of Commercial Exchange of Philadelphia, et al.

23. Order allowing appeal of Commercial Exchange of Philadelphia, et al.

24. Appeal Bond.

25. Notice to Attorney General of Pennsylvania of appeal.

26. Order allowing appeal of Philadelphia Warehousing and Cold Storage Company, and staying Commission's order pending appeal.

27. Petition for cross-appeal.

28. Assignment of errors on cross-appeal.

29. Order allowing cross-appeal.

30. Citation on cross-appeal.

31. Notice to Attorney General of Pennsylvania of cross-appeal.

32. Orders extending time for docketing case on appeal.

NOTE.—These are the identical Orders described in Item 33rd of the documents in No. 5781, and are here incorporated by reference thereto. (See original page —; Printed page —).

33. Stipulation in re statement of evidence.

NOTE.—This is the identical Stipulation described in Item 34th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

34. Order approving statement of evidence.

NOTE.—This is the identical Order described in Item 35th of the documents in No. 5781, and is here incorporated by reference thereto. (See original page —; Printed page —).

[fol. 1162] 35. This praecipe.

36. Journal entries in their proper order.

M. Hampton Todd, Solicitor for Merchants Warehouse Company. H. Edgar Barnes, Solicitor for Pennsylvania Warehousing & Safe Deposit Co. John P. Connelly, Solicitor for Philadelphia Warehousing & Cold Storage Co. Allen S. Olmsted, 2nd, Solicitor for Commercial Exchange of Philadelphia et al.

We have read the above praecipe and do not desire to file a separate praecipe indicating any additional portions desired to be included.

Elmer B. Collins, For the United States. J. Stanley Payne, Solicitor for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage and Warehouse Company.

[fol. 1163] In United States District Court for the Eastern District of Pennsylvania, December Term, 1929

No. 5789

The Pennsylvania Warehousing and Safe Deposit Company, Plaintiff, and Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, The Association of Manufacturers' Representatives, Incorporated, Intervening Plaintiffs,

vs.

United States of America and Interstate Commerce Commission, Defendants, and Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Industrial Cold Storage and Warehouse Company, Intervening Defendants

H. Edgar Barnes, Esqs.; Saul, Ewing, Remick & Saul, Esqs.

Elmer B. Collins, Esq.; J. Stanley Payne, Esq.; T. L. Reimel, Esq.; John J. Hickey, Esq.

Docket Entries

Feb. 18, 1930. Petition to annul order of Interstate Commerce Commission filed.

" 18, " Decree fixing Feb. 21, 1930, for hearing application for temporary stay of operation of Order of Interstate Commerce Commission filed.

Feb. 20, 1930. Order of Court substituting name of Hon. Oliver B. Dickinson in place of Hon. Wm. H. Kirkpatrick filed.

" 21, " Petition by Walter A. Bailey, et al., for leave to intervene as defendants and Decree granting petition filed.

" 21, " Decree granting temporary stay of Order of Interstate Commerce Commission filed.

" 25, " Answer of Rex and Company, Inc., et al., Intervening defendants, filed.

Mar. 4, 1930. Appearance of T. L. Reimel, Esq., for Intervening defendants, filed.

" 6, " Answer of Interstate Commerce Commission filed.

" 8, " Petition by Commercial Exchange of Philadelphia for leave to intervene as party plaintiffs and Decree granting petition filed.

[fol. 1164]

Mar. 15, 1930. Answer by United States of America filed.

" 22, " Printed copy of petition of Penna. Warehousing & Safe Deposit Co., filed.

" 26, " Argued.

" 27, " Decree amending Decree of Feb. 17, 1930, by substituting the name of Hon. Joseph Buffington in place of Hon. Victor B. Woolley, filed.

" 27, " Argument resumed.

" 28, " Argument concluded.

Apr. 15, 1930. Decree continuing temporary stay of Order of Interstate Commerce Commission filed.

Oct. 8, 1930. Opinion, Thompson J. (Dickinson J. concurring, Buffington J. dissenting) dismissing petition of Feb. 18, 1930 to enjoin defendants from enforcing Order of Interstate Commerce Commission filed.

Nov. 5, 1930. Opinion, Thompson J., sur findings of fact and conclusion of law filed.

" 19, " Exceptions by Petitioner to findings of fact and conclusions of law filed.

Nov. 19, 1930. Argued sur settlement of decree and petition for appeal to act as supersedeas.

" 19, " Final Decree dissolving temporary orders of Feb. 21, 1930, and April 15, 1930, staying and suspending Order of Intefstate Commerce Commission of Dec. 28, 1929; overruling plaintiff's exceptions to findings of fact and conclusions of law; and dismissing petition to enjoin defendants from enforcing Order of Interstate Commerce Commission of Dec. 28, 1929, filed.

" 19, " Opinion (per curiam) granting order of supersedeas and allowing exception thereto filed.

" 19, " Petition for appeal, assignments of error, and prayer for reversal of Decree of Nov. 19, 1930, filed.

" 19, " Decree granting petition for appeal filed.

" 19, " Bond sur appeal in $2000, with American Surety Company of New York, surety, and Decree approving bond filed.

" 19, " Citation allowed and issued.

" 19, " Citation returned: "service accepted" and
[fol. 1165] filed.

Dec. 17, 1930. Decree extending time for docketing case in U. S. Supreme Court filed.

" 24, " Assignments of Error by Intervening plaintiffs filed.

" 24, " Prayer for reversal by Intervening plaintiffs filed.

" 24, " Decree allowing Petition for Appeal by Intervening plaintiffs filed.

" 24, " Citation allowed and issued.

" 26, " Citation returned: "service accepted" and filed.

" 30, " Decree enlarging time in which to file record with Clerk of Supreme Court of United States to January 10, 1931, filed.

Jan. 7, 1931. Copy of Notice to Attorney General of Pennsylvania of Petitioner's appeal, and proof of service, filed.

Jan. 7, 1931. Order Consolidating this cause with Nos. 5781 and 5791 for purpose of trial, filed.
" " " Statement of Evidence in Narrative form, Stipulation of Counsel, and Order approving same, filed.
" " " Petition for Cross-Appeal by Respondents, filed.
" " " Assignment of Error on Cross-Appeal, filed.
" " " Order allowing Cross-Appeal, filed.
" " " Citation on Cross-Appeal allowed and issued.
" " " Citation returned "service accepted" and filed.
" " " Copy of Notice to Attorney General of Pennsylvania of Cross-Appeal, and proof of service, filed.
" " " Præcipe for Transcript of Record sur appeals, filed.

[fols. 1166 & 1167] IN UNITED STATES DISTRICT COURT

In Equity

No. 5789

[Title omitted]

PETITION—Filed Feb. 18, 1930

1. The petitioner above named brings this its petition against the defendants above named, for the purpose of enjoining, setting aside and annulling as hereinafter prayed, an order entered by the Interstate Commerce Commission (hereinafter called the Commission) by Division 3 thereof, on the 28th day of December, 1929, in a proceeding then pending before the Commission, namely, Interstate Commerce Commission Docket No. 20968 (Sub. No. 1) in which Walter A. Bailey and Terminal Warehouse Company were [fol. 1168] Complainants, The Baltimore and Ohio Railroad Company was Defendant, and your Petitioner was Intervenor; and Docket No. 20968 (Sub. No. 2) in which

Rex and Company, Inc.; James Gallagher; Northeastern Warehouse Company; Walter A. Bailey; Terminal Warehouse Company; and Industrial Cold Storage and Warehouse Company were Complainants, the Reading Company was Defendant, and your Petitioner was Intervenor.

2. Petitioner is a corporation duly organized and existing under the laws of Pennsylvania. It is engaged in the business of operating warehouses. Its principal office and all of its warehouses are in the City of Philadelphia in the said Eastern District of Pennsylvania.

3. United States of America is a necessary party defendant in a proceeding to enjoin, set aside and annul an order of the Interstate Commerce Commission under the provisions of the District Court Jurisdiction Act, approved October 22, 1913, (38 Stat. L., 219), U. S. Code, Title 28, Section 41, Sub Division 28, Sections 43 to 48. This suit is brought under the provisions of said act and also under the general equity jurisdiction of this Court.

4. The Interstate Commerce Commission is an administrative tribunal created by the Interstate Commerce Act, approved February 4, 1887, (24 Stat. L., 379), as amended, including amendments to said Act contained in the Transportation Act of 1920, approved February 28, 1920 (41 Stat. L., 456), under which said acts it assumed to proceed in rendering its said order on December 28, 1929, in the proceeding aforesaid.

[fol. 1169] 5. The Baltimore and Ohio Railroad Company, and the Reading Company, (hereinafter called "The Carriers") undertake to load and unload freight consigned from and to the City of Philadelphia at certain stations at Philadelphia. Included among these stations are the warehouses which are operated by your Petitioner. Several of these warehouses are owned by the said Carriers and operated by your Petitioner under contract, others are owned outright and operated by your Petitioner.

6. The aforesaid Carriers undertake to load and unload carload package freight at the terminal stations in the City of Philadelphia referred to in paragraph 5 and to perform certain other services incident to the transportation of carload package freight at said designated terminal

stations. Forty-eight hours free storage is allowed by the Carriers to consignees after the arrival of carload freight at any one of the designated stations and the Carriers are obliged as a part of their transportation duties under the Interstate Commerce Act to store and protect such carload freight during said period of free time.

7. The petitioner and the aforesaid Carriers have respectively entered into a series of agreements covering the operations above mentioned. Some of these are leases of the property owned by the Carriers, as well as contracts under which the Stations are operated. All of them provide that the petitioner shall perform certain services for the said Carriers, as follows:

(a) With respect to inbound freight, after the cars have been placed on the sidings of the Petitioner's warehouses, the Petitioner inspects and breaks the seals of the cars, [fol. 1170] and opens the doors, unloads the cars, tallies the contents thereof, makes note of any damaged contents and reports the damage, overage or shortage of contents to the said Carriers. Petitioner carries insurance upon the goods and stores them for the period of forty-eight hours after arrival. It sends out arrival notices to the owners of the merchandise, and on behalf of the Carriers makes collection of the freight charges. (b) With respect to outbound freight, the Petitioner receives the merchandise at its warehouse, tallies it, inspects it for damage, loads it in the car and then seals the car. It may be stated that such services in connection with outbound freight are rendered by this Petitioner only to the Baltimore and Ohio Railroad Company and not to the Reading Company.

8. In compensation for the services so rendered, and the facilities supplied and used, the Baltimore and Ohio Railroad Company pays to Petitioner fifty cents (50¢) per net ton of two thousand (2000) pounds of inbound and outbound shipments, received, handled and stored on behalf of said Carrier, while the Reading Company pays thirty cents (30¢) per net ton of two thousand (2000) pounds on inbound shipments received, handled and stored by it, with the exception that upon newsprint paper it pays fifteen — (15¢) per net ton for the same services.

9. As hereinabove averred, included in the services of loading, unloading and "handling" freight for the said Carriers under its contracts, the Petitioner renders as agent of the said Carriers a variety of terminal services incident to their transportation duties as common carriers, such as: removing and recording the seals from car doors [fol. 1171] and preserving the record thereof; examining the merchandise in the car and noting the damage and cause for same; prompt inspection of equipment; prompt loading and unloading to minimize the delay to the equipment; storing the shipment for forty-eight hours including its protection against fire and by insurance; taking up the bills of lading and cancelling the same; delivering the merchandise to the consignee and taking the receipt therefor; handling claims for damage and disposal of refused merchandise; executing bills of lading for outbound shipments; tallying the contends of the car and placing seals on same.

10. All of said services covered by the said contracts and rendered by the Petitioner are transportation services as defined by Section 1 of the Interstate Commerce Act, and as to all of them, the said Carriers are under legal obligation to perform them or cause them to be performed, and the payment and consideration provided in said contracts, are made for the performance by the petitioner of said transportation services as the duly designated agent of said Carriers. No payment of any kind, direct or indirect, is made by either of said Carriers to the Petitioner except the payments for the said transportation services.

11. The Petitioner has performed its obligations under said contracts with care and fidelity and to the satisfaction of the said Carriers and of the public. It has received as payment for its services under the said contracts upwards of $38,000, annually, of which approximately $28,000. is received from the Reading Company, and $10,000 from The Baltimore and Ohio Railroad.

[fol. 1172] 12. By complaint dated April 26, 1928, James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company, brought a complaint before the Interstate Commerce Commission, which

complaint was docketed by the Commission as Docket #20968. It avers that the complainants own and operate warehouses in Philadelphia in competition with The Merchants Warehouse Company, that both complainants and said Warehouse Company were shippers within the meaning of the Interstate Commerce Act and that the Pennsylvania Railroad, in the form of traffic allowances, was refunding to the said Warehouse part of the published rates and thereby was collecting from the said Warehouse a less compensation than it collected, and was collecting from the complainant for rendering like and contemporaneous services under substantially similar circumstances and conditions in violation of Sections 2 and 3 of the Interstate Commerce Act. At the same time Walter A. Bailey, and others complained of similar payments made to your Petitioner by the Baltimore and Ohio Railroad Company, and Rex and Company, Inc., and others complained of similar payments made to your Petitioner by the Reading Company. These last two complaints were docketed by the Interstate Commerce Commission as Docket No. 20968 Sub # 1, and 20968, Sub # 2, respectively.

13. Thereafter the Pennsylvania Railroad answered denying the charges of violation of the Interstate Commerce Act and the Baltimore and Ohio Railroad Company and the Reading Company did likewise in the complaints filed against them. Your petitioner petitioned the Interstate Commerce Commission for leave to intervene. The Mer- [fol. 1773] chants Warehouse Company, The Commercial Exchange of Philadelphia, The Grocers and Importers Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Inc., also petitioned the Commission for leave to intervene in the case averring that the arrangements complained of had been in effect for many years, and had added greatly to economy, convenience and expedition in the handling of freight and that interference with the arrangement would be greatly prejudicial to the business interests of Philadelphia. Said petitions were granted by the Commission.

14. Thereafter the Commission consolidated the three cases above named and set them all for hearing before an

Examiner of the Commission on July 30, 1928. On the said date and subsequent dates, the complainants, the defendants, and the intervenors presented testimony before the said Examiner. A copy of the transcript of said testimony, the exhibits (including the contracts between the petitioner and the said Carriers, the complaint, the answer, the petitions of intervenors and the order of the Commission therein, will be offered in evidence at the hearing of this petition.

15. Thereafter, to wit, on December 28, 1929, the Division Three of the Commission (who, under the Interstate Commerce Act, as amended, are empowered to act in behalf of the Commission) acting by Commissioners Atchison and Porter, filed a report and order in the matter. One report and one order was made to cover all three complaints. A copy of said report and order is attached hereto and made a part hereof, marked respectively Exhibits "A" and "B".

[fol. 1174] 16. By the said order which was to become effective on February 10, 1930, (and by subsequent action was, upon the petition of your petitioner, postponed until February 25, 1930), the said Carriers are required to cease, desist and abstain from making the payments to your petitioner which it has contracted to make and are required to cancel their tariff provisions which make the warehouses of petitioner a part of the Carriers' station facilities at Philadelphia.

17. Thereafter your petitioner petitioned for a rehearing or reargument before the full Commission. Said petition was denied by the Commission on February 10, 1930. With the denial of the said petition, Petitioner's remedies before the Interstate Commerce Commission were exhausted.

18. Petitioner charges and avers:

(a) The Commission's order in the premises aforesaid is invalid and of no legal force or authority, and therefore the same should be declared to be null, void, and of no effect.

(b) As appears from the proceedings of the Commission, as set forth in its report, said order proceeds upon the

conclusion of the Commission that petitioner is to be deemed the consignor of shipments from and consignee of shipments to its warehouses. The said conclusion on the part of the Commission is not substantiated by any evidence produced before it, but is contrary to and inconsistent with all the evidence adduced in said proceedings and is inconsistent with recognized principles of law defining and creating relations of shipper, consignor and consignee with a common carrier. In fact and in law the petitioner is not in any legal sense within the meaning and intent of the [fol. 1175] Interstate Commerce Act or otherwise, a shipper, consignor, or consignee in respect to any of the property with regard to which it receives a payment from either one of said carriers.

(c) As appears from the said report, the order proceeds upon the conclusion that the facilities of petitioner's warehouses were only nominally opened to the general public as Railroad freight stations and were not, in fact, public stations in that they were confined to the handling of merchandise for the patrons of the Warehouses; whereas the evidence shows that some of the warehouses operated by the petitioner are the property of the carrier, are recognized public stations opened to the general public and that all of such warehouses are and have been for many years actually used by the public. The Commission proceeds upon the erroneous legal proposition that a warehouse by tariff publication open to all of the public and actually used by such portion of the public as are patrons of the warehouse, is not, in true contemplation of law, a public station.

(d) As appears from the report of the Commission said order proceeds upon the conclusion of the Commission that the services performed by the petitioner in connection with the loading and unloading of freight are, in fact, performed for the benefit of the owners of the merchandise rather than for the said Carriers. The undisputed evidence shows that the Carriers undertake by their tariff to load and unload the freight and the said service is therefore not "performed for the benefit of the owners of the merchandise" in any other sense than all transportation services benefit the owners of the merchandise. The said order proceeds upon the erroneous proposition of law that the

[fol. 1176] said Carriers cannot pay their agent for rendering a transportation service if that service is performed for the benefit of the owners of the freight.

(e) As appears from the report of the Commission said order proceeds upon the conclusion that the petitioner had been given dominion over the goods for transportation purposes and accordingly for transportation purposes it should be deemed the consignor of shipments from or the consignee of shipments to its warehouses. The undisputed evidence shows that as to inbound freight, petitioner is not "given dominion over" the goods by the owner thereof, but receives them from the said Carriers in order that petitioner may perform the transportation service for which they had obligated themselves. The order is based upon the erroneous proposition of law that petitioners may be "deemed" consignors or consignees of shipments as to which they are neither consignors nor consignees.

(f) As appears from the report of the Commission, said order proceeds upon the conclusion that the practice of the said Carriers in making payments to the petitioner for loading or unloading package freight while refusing to make similar payments to the complainants resulted in unjust discrimination between the petitioner and the complainants, in undue preference to the petitioner, and in undue prejudice to the complainants. If petitioner and complainants were within the contemplation of Sections 2 and 3 of the Interstate Commerce Act and if such discrimination, preference or prejudice were undue and unjust, the same could be removed as a matter of law by giving allowances to both the petitioner and the complainants. The order of the Commission does not permit such a method [fol. 1177] of removing the alleged unjust discrimination, undue preference and undue prejudice. The order is based upon the erroneous proposition of law that unjust discrimination, undue preference and undue prejudice, if they exist, cannot be removed by an order permitting the defendant to make to complainants payments similar to those made to petitioner.

(g) As appears from the report of the Commission, the said order proceeds upon the conclusion that the payments made to petitioner are nothing more than a device or at-

tempt to lend legality to the payment of rebates to the petitioner. A rebate is a deduction from the published rate which finds its way into the pocket of the consignor, consignee of owner of the freight. The undisputed evidence shows that petitioner is not the owner, consignor or consignee of the freight and that the consignor, consignee or owner of the freight in every instance pays the full published tariff rate, and receives no rebate or drawback therefrom. The order is based upon the erroneous proposition of law that a payment made by a railroad to its agent for the rendition of a transportation service is the payment of a rebate to a shipper.

(h) The order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to interfere with the right of a carrier to employ exclusively a particular agent or agents to perform transportation service which the carrier is required to perform either under its tariff or by virtue of its common law or statutory duties and obligations.

(i) The said order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the [fol. 1178] Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to supervise, control or regulate the designation by carriers of terminal stations or of the internal management of said stations, or of the payment of compensation for the internal management of said stations.

19. The said order of the Commission unless set aside and annulled by this Court will operate to deprive the petitioner of the enjoyment of its rights under its said contracts with the said Carriers, and will, in fact, completely destroy said contracts and all property rights of the petitioner therein. By force of said order, the Carriers will be constrained by the Commission to nullify or break its said contracts with the petitioner or terminate them and your petitioner is informed and believes that the Carriers acting under the compulsion and duress of said order, will be required to nullify and set aside its contracts with petitioner.

Petitioner therefore avers for the reasons aforesaid that

the said order of the Commission is in violation of the Constitution of the United States and the amendments thereto, for the reason that it will deprive the petitioner of its property without due process of law.

20. The practice of unloading the carload freight at Petitioner's warehouses and other contract warehouses in the City of Philadelphia at the cost of the carriers has been in effect in Philadelphia for many years, in some cases, as long as forty years. During that time the trade has accustomed itself to that practice and merchants have made [fol. 1179] arrangement with their purchasers, sellers and principals, based on the continuance thereof. The prohibition of the continuance of that practice during the period when the legality of the Commission's order is under consideration by the Court would throw the entire trade into confusion and would cause irreparable damage to your petitioners as well as to the mercantile interests of Philadelphia generally.

21. If a temporary stay or suspension, or interlocutory injunction or restraining order, pending a final decree in this case is not granted, the Carriers will amend their tariffs on file with the Commission, so as no longer to undertake to unload carload package freight at the stations and warehouses operated by petitioner, and so as no longer to provide for the payment of compensation to petitioner and it will cease to pay to the petitioner the compensation provided for in the contracts above mentioned. Petitioner will thereupon be under the compulsion of making changes in the schedule of charges which it must collect from its customers and otherwise disturb and amend its established practices in conducting its warehouse business as aforesaid which changes in business methods will tend to disrupt the business of petitioner in a manner that cannot be compensated for in damages if and when the Courts shall decide upon a final hearing that the order of the Interstate Commerce Commission is invalid.

Therefore petitioner prays:

1. That upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge in accordance with the Act of Con-

[fol. 1180] gress approved October 22, 1913, 38 Statutes 220 U. S. Code Title 28, Section 47.

2. That after no less than three days' notice to the Interstate Commerce Commission, and the Attorney General of the United States, there be ordered and granted by the Court a temporary stay or suspension of the operation of the order of the Commission entered December 28, 1929, in the matter of Walter A. Bailey and Terminal Warehouse Company vs. Baltimore and Ohio Railroad Company, Docket No. 20968 (Sub. No. 1); and in the matter of Rex and Company, Inc., et al., vs. Reading Company Docket No. 20968 (Sub. No. 2) for sixty days from the date of said order, as provided in Section 47 of Title 28 of the United States Code.

3. That upon not less than five days' notice, to the Interstate Commerce Commission, to the Attorney General of the United States, an interlocutory injunction be issued suspending or restraining the enforcement, operation or execution of the said order until the further order of this Court.

4. That upon final hearing, this Court adjudge, order and decree that said order of the Interstate Commerce Commission dated December 28, 1929, is null and void and without warrant in law and that the same be set aside and annulled and that the United States of America and the Interstate Commerce Commission, and each of them be perpetually restrained and enjoined from enforcing said order.

5. That your petitioner may have such other and further [fols. 1181-1196] relief as to equity may appertain and as may be deemed by this Honorable Court fit and proper.

Pennsylvania Warehousing and Safe Deposit Company, by John A. McCarthy, President. H. Edgar Barnes, Solicitor for Petitioner.

Duly sworn to by John A. McCarthy. Jurat omitted in printing.

[fol. 1197] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS AMENDED, FIXING TIME FOR HEARING, ETC.—Filed Feb. 18, 1930

Whereas it appears that this is a proceeding for a final decree to set aside and annul an order of the Interstate Commerce Commission made in the matter of Walter A. Bailey and Terminal Warehouse Company against The Baltimore and Ohio Railroad Company, Interstate Commerce Commission Docket No. 20968 (Sub. No. 1); and in the matter of Rex and Company, Inc.; James Gallagher; Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company; and Industrial Cold Storage and Warehouse Company against the Reading Company, Interstate Commerce Commission Docket No. 20968 (Sub. No. 2), entered on the 28th day of December, 1929, to become effective on the 10th day of February, 1930, which effective date, by a subsequent order of the said Commission, was postponed until the 25th day of February, 1930.

And whereas it appears that the petitioner herein asks for a temporary stay or suspension of the operation of the order of the said Commission.

And whereas it further appears that under the provisions of the United States Code, Title 28, Section 47, the [fol. 1198] hearing in this Court is directed to be before a Court consisting of three Judges, one of whom shall be a Circuit Judge.

Now, therefore, it is ordered this 17th day of February, 1930, by the District Court of the United States for the Eastern District of Pennsylvania, that the following Judges be called to my assistance to hear and determine the said application, to wit: United States Circuit Judge Victor B. Woolley and United States District Judge Oliver B. Dickinson.

It is further ordered that the application for a temporary stay be set for hearing before said Court on the 21st day of February, 1930, at 10 o'clock, at Philadelphia.

It is further ordered that immediate notice of the said hearing be given by the petitioner to the Interstate Commerce Commission and to the Attorney General of the

United States by telegraph and by registered mail or by personal delivery.

J. W. Thompson, United States District Judge.

[fol. 1199] In United States District Court

In Equity. No. 5789

[Title omitted]

Petition for Leave to Intervene—Filed Feb. 21, 1930

To the Honorable the Judges of said Court:

The petition of Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage and Warehouse Company, shows unto this Court as follows:

Your petitioner Walter A. Bailey is an individual, trading and doing business under the name and style "Bailey Warehouses"; your petitioner James Gallagher is an individual, trading and doing business under the name and style "Gallagher's Warehouses"; and your petitioners Terminal Warehouse Company, Rex and Company, Inc., Northeastern Warehouse Company, and Industrial Cold Storage and Warehouse Company, are corporations duly organized and existing under the laws of the Commonwealth of Pennsylvania; each of your petitioners having its principal place of business in the City of Philadelphia, Pennsylvania. The above entitled proceeding grew out of the complaints, before the Interstate Commerce Commission, Docket No. 20968 (Sub. No. 1) in which your petitioners Walter A. Bailey and Terminal Warehouse Company were complainants, The Baltimore and Ohio Railroad Company was defendant, and The Pennsylvania Warehousing and Safe Deposit Company was intervener, and [fol. 1200] Docket No. 20968 (Sub. No. 2) in which your petitioners Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company were complainants, the Reading Company was defendant, and The Pennsylvania Ware-

housing and Safe Deposit Company was intervener, and as a result of the hearing of the said complaints an order was passed by the Interstate Commerce Commission, a copy of which is attached to the petition of The Pennsylvania Warehousing and Safe Deposit Company in this proceeding; that this proceeding is brought by The Pennsylvania Warehousing and Safe Deposit Company to set aside the said order of the Interstate Commerce Commission; that your petitioners are deeply interested in and affected by the said order of the Interstate Commerce Commission; that it is necessary for the protection of the interests and rights of your petitioners that your petitioners be made parties to this proceeding.

Your petitioners desire to intervene in this proceeding as parties defendant for the purpose of being heard and protecting their rights.

Wherefore your petitioners pray that an order may be passed by this Honorable Court permitting your petitioners to intervene as parties defendant in the above-entitled proceeding.

Walter A. Bailey, by Walter A. Bailey, Terminal Warehouse Company, by Ernest V. D. Sullivan, [fol. 1201] Pres. Rex and Company, Inc., by Frank E. Klinger, Secretary. James Gallagher, by James Gallagher, Jr. Northeastern Warehouse Company, by Blair R. Miller, Supt. Industrial Cold Storage and Warehouse Company, by J. A. Mooney, Gen'l Mgr. John J. Hickey, Solicitor for the Petitioners. Theodore L. Reinel, Local Counsel.

[fol. 1202] In United States District Court

[Title omitted]

Before Woolley, C. J.; Thompson & Dickinson, D. J.

Order Granting Leave to Intervene—Filed Feb. 21, 1930

On the foregoing petition it is on this 2st day of February, 1930, by the District Court of the United States for the Eastern District of Pennsylvania, ordered:

That Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage and Warehouse Company be permitted to intervene in the proceedings of the above-entitled case as parties defendant for the purpose of being heard and protecting their rights.

By the Court.

Attest:

Theodore L. Cobaugh, Deputy Clerk.

[fol. 1203] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING A TEMPORARY STAY OF THE OPERATION OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed Feb. 21, 1930

Whereas, by Petition filed February 14th, 1930, the Petitioner, the Pennsylvania Warehousing and Safe Deposit Company, prays the District Court to call to its assistance two other Judges, one of whom shall be a Circuit Judge, in accordance with Title 28, Section 47 of the United States Code, and prays that this Court set aside and annul an Order of the Interstate Commerce Commission entered in the matters of Walter A. Bailey and Terminal Warehouse Company against the Baltimore and Ohio Railroad Company, I. C. C. Docket No. 20968 (Sub. No. 1), and Rex and Company, Inc.; James Gallagher; Northeastern Warehouse Company; Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company against the Reading Company, I. C. C. Docket No. 20968, (Sub. No. 2), and also praying for a temporary stay or suspension of the operation of the said order.

And whereas, it appears that the said order of the Interstate Commerce Commission is to become effective Feb-
[fol. 1204] ruary 25th, 1930.

And whereas, on February 17th, 1930, the Honorable J. Whitaker Thompson entered an order calling to his assistance United States Circuit Judge, Victor B. Woolley, and United States District Judge, Oliver B. Dickinson, to hear and determine the said application and setting the application for a temporary stay for hearing before the said special Court on February 21st, 1930,

And whereas, it appears that notice of the said hearing was given by the Petitioner to the Interstate Commerce Commission, and to the Attorney General of the United States by Registered Mail, on February 17th, 1930.

And whereas, a hearing was held upon the said application for a temporary stay in the Court Rooms of the United States Circuit Court of Appeals at Philadelphia, on February 21st, 1930, before the said Special Court, at which hearing witnesses in behalf of the Petitioner were examined under oath,

Now, therefore, this Court finds, based upon the evidence submitted to the Judges comprising the said Special Court at the said hearing on February 21st, 1930, that irreparable damage would ensue to the Petitioner, the Pennsylvania Warehousing and Safe Deposit Company, unless the operation of the said order is stayed or suspended in whole during the pendency of this Petition before this Court.

And, it is, therefore, ordered, adjudged and decreed that the said order of the Interstate Commerce Commission in the matter of Walter A. Bailey and Terminal Warehouse Company against The Baltimore and Ohio Railroad Company, I. C. C. Docket No. 20968, (Sub. No. 1) and in the matter of Rex and Company, Inc.; James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company against the Reading Company, I. C. [fol. 1205] C. Docket No. 20968, (Sub. No. 2), be stayed and suspended in whole for a period of sixty days from the date hereof.

It is further ordered, adjudged and decreed that the said Petition be set for final hearing before this Special Court at Philadelphia in the Court Rooms of the Circuit Court of Appeals for the third circuit, on the 26th day of March next, at 10 o'clock A. M.

Victor B. Woolley, Circuit Judge. J. W. Thompson, District Judge. O. B. Dickinson, District Judge.

February 21st, 1930.

Service Accepted this Feb. 21, 1930, by Elmer B. Collins for the United States of America; by J. Stanley Payne, for Interstate Commerce Commission.

[fol. 1206] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERVENERS—Filed Feb. 25, 1930

Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Industrial Cold Storage and Warehousing Company, Walter A. Bailey and Terminal Warehouse Company, interveners, for answer to the petition filed herein by The Pennsylvania Warehousing and Safe Deposit Compay, petitioner, say:

1. Answering paragraphs 1, 2, 3 and 4 of the petition, said interveners admit, for the purpose of this suit, that the allegations in those four paragraphs are true, except that said interveners deny that this suit was instituted or may be maintained under the general equity jurisdiction of the District Court of the United States for the Eastern District of Pennsylvania.

2. Answering paragraphs 5, 6, 7, 8, 9, 10 and 11 of the petition, said interveners deny the truth of each and all of the allegations made in those seven paragraphs.

3. Answering paragraphs 12 and 13 of the petition, said interveners admit that the allegations made in those two paragraphs are true.

4. Answering paragraph 14 of the petition, said interveners admit that the allegations in that paragraph are true with the exception that said interveners do not, and cannot admit that the petitioner will offer certain evidence at the hearing of the petition.

5. Answering paragraphs 15, 16 and 17 of the petition, said interveners admit the truth of the allegations in those three paragraphs.

[fol. 1207] 6. Answering paragraphs 18, 19, 20 and 21 of the petition, said interveners deny the truth of the allegations in those four paragraphs.

7. Further in answer to paragraphs 7, 8, 18 (b), 19 and 21 of the petition, it appears that the petitioner does not assert the rights of a shipper, rate payer or carrier that can be directly affected by the measure of freight rates or

an order of the Interstate Commerce Commission directed to any matter arising under sections 2 or 3 of the Interstate Commerce Act. The petitioner seeks an adjudication of certain contracts and of a question relating to compensation for services alleged to have been performed by the petitioner for the Reading Company and the Baltimore and Ohio Railroad Company. This court, constituted by virtue of the Act of Congress, approved October 22, 1913, 38 Stat. 220, is without authority to pass on such questions as to contracts and compensation.

8. Further answering the petition, said interveners deny any and all allegations therein, other than those expressly admitted above.

9. Further answering the petition, said interveners say that the Interstate Commerce Commission is fully empowered to make the order challenged in the petition; that said order is valid and is supported by substantial evidence, and that the petitioner has not shown that said order is invalid or is without substantial support of evidence.

Wherefore, having fully answered the petition, said interveners pray that the prayer of petitioner be denied and that the petition be dismissed at the cost of the petitioner.

Rex and Company, Inc., Northeastern Warehouse Company, James Gallagher, Walter A. Bailey, Industrial Cold Storage and Warehouse Co., Terminal Warehouse Company, Interveners. (S.) John J. Hickey, Solicitor for the Interveners, 800 Southern Building, Washington, D. C. Theodore L. Reimel, Local Counsel.

[fol. 1208] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF INTERSTATE COMMERCE COMMISSION—Filed Mar. 6, 1930

The Interstate Commerce Commission, respondent in the above-entitled suit, hereinafter called the Commission,

now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, 3, and 4 of the petition, the Commission admits, for the purposes of this suit, that the allegations therein contained are true, except that the Commission denies the suit was commenced or may be maintained under the general equity jurisdiction of the District Court.

[fol. 1209] II

Answering paragraphs 5 to 21, both inclusive, of the petition, the Commission admits, for the purposes of this suit, that the allegations contained in paragraphs 12, 13, 14, 15, 16, and 17 are true, and admits and alleges that it made the report and order dated December 28, 1929, in a proceeding then pending before it entitled James Gallagher, et al. v. Pennsylvania Railroad Company, Docket No. 20968, which proceeding also embraced No. 20968, Sub. No. 1, Walter A. Bailey, et al. v. Baltimore & Ohio Railroad Company, and No. 20968, Sub. No. 2, Rex & Company, Inc., et al. v. Reading Company, a copy of which report and order is attached to and made a part of the petition; that the Commission refers the court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based.

The Commission further alleges that at the hearings referred to in paragraph 14 of the petition, in connection with the subject matters covered by said report and order, the Commission accorded to all interested parties, including petitioner herein, a full and fair opportunity to be heard; that at said hearings a large volume of testimony and other evidence bearing upon said matters was sub-

mitted to the Commission for consideration on behalf of said parties, including the petitioner herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said report and order, which included the Commission's [fol. 1210] findings of fact, decision, conclusions, orders, and requirements in the premises, and that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

The Commission further alleges that the findings and conclusions in said report of December 28, 1929, were and are, and that each of them was and is fully supported and justified by the evidence submitted to the Commission in said proceedings as aforesaid.

The Commission further alleges that in making said report of December 28, 1929, it considered and weighed carefully in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel, including matters covered by the allegations of the petition herein.

The Commission further alleges that said order of December 28, 1929, was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it and the Commission denies each of and all the allegations to the contrary contained in the petition.

III

Further answering paragraphs 18, 19, 20, and 21 of the petition, the Commission denies that said order of December 28, 1929, is either unlawful or void, for the reasons, or for any of the reasons, set forth in said paragraphs. The Commission particularly denies that the petitioner will suffer either irreparable damage or irreparable

injury as alleged in paragraphs 19, 20, and 21 of the peti-
[fol. 1211] tion unless said order of December 28, 1929, is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict with the allegations herein, or with either the statements or conclusions of fact included in said report and order of December 28, 1929, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 1212] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

PETITION OF COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' AND IMPORTERS' EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, PHILADELPHIA BOURSE, AND THE ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INCORPORATED, FOR LEAVE TO INTERVENE AND ORDER PERMITTING INTERVENTION—Filed Mar. 8, 1930

Now come the Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Incorporated, and respectfully petitions the Court for leave to intervene in the above case in accordance with Section 212 of the Act approved October 22, 1913, 39 Stat. 219 U. S. Code, Title 28, Section 45a, and as reason therefore aver:

Petitioners were parties in interest to the proceeding before the Commission, to wit: Walter A. Bailey, et al. vs.

Baltimore and Ohio Railroad Company, I. C. C. Docket #20968, sub #1, and Rex and Company, Inc. et al. vs. Reading Company, I. C. C. Docket #20968, sub #2, having been permitted to intervene by the Commission. They presented evidence before the Commission, appear-d by counsel, filed briefs, and participated in the oral argument before the Commission. They are Corporations and Asso-
[fols. 1213 & 1214] ciations who are interested in the controversy or question before the Interstate Commerce Commission.

Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Association of Manufacturers' Representatives, Incorporated, by Allen S. Olmsted, 2nd, Attorney.

Before Woolley, C. J., and Thompson and Dickinson, D. J.

Order

And now, to wit, this 21st day of February, upon motion of Allen S. Olmsted, 2nd, Esquire, the said Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and Association of Manufacturers' Representatives, Incorporated, are permitted to intervene in the above case with right to appear by counsel and present testimony.

By order of the Court.

Attest:

(S.) George Brodbeck, Clerk.

[fol. 1215] In United States District Court

In Equity. No. 5789

[Title omitted]

Answer of the United States of America—Filed Mar. 15, 1930

United States, one of the respondents in the above entitled case, for answer to the petition heretofore filed therein against it says:

I

United States admits, for the purposes of this suit, the matters and conclusions alleged in paragraphs 1, 2, 3 and 4, of the petition, except this: It denies that the suit is brought or can be maintained under the general equity jurisdiction of this Court.

II

Answering the allegations contained in paragraphs 7, 8, 9 and 10 of the petition, United States admits that petitioner and the carriers therein named have entered into the agreements therein mentioned, but particularly denies that petitioner performs the alleged "services" described in those paragraphs for those carriers, as their agent or [fol. 1216] otherwise, and alleges that such services are performed by petitioner in the conduct and as part of its own private merchandise warehouse business. United States further admits that petitioner receives the amounts mentioned in said paragraph 8 from the carriers therein named; but denies that said amounts are compensation for services rendered by petitioner to those carriers, and further denies that the alleged "services" are those for which those carriers may lawfully make payment of those, or any other amounts to petitioner, or for which petitioner may lawfully receive from said carriers payment of those or any other amounts. Except as so admitted, United States denies each and every allegation of said paragraphs.

III

Answering paragraph 11 of the petition, United States admits that petitioner has received large sums of money annually from said carriers purporting to be payments for services rendered by petitioner to said carriers, but denies that petitioner performed said services for said carriers; and alleges that said services are not those for which said sums, or any other sum, may lawfully be paid by those carriers to, or lawfully received by petitioner from them.

IV

United States admits for the purposes of this suit the allegations of paragraphs 12 to 17, both inclusive, of the petition.

V

Answering paragraphs 18 to 21, both inclusive, of the petition, United States denies that the order of the Interstate Commerce Commission is invalid, of no legal force, null, void or in violation of the Constitution of the United [fol. 1217]. States for the reasons set forth and alleged in said paragraphs, or for any other reason; and denies particularly that petitioner will suffer irreparable damage or other legal injury if said order is not temporarily stayed, suspended or restrained.

VI

Further and affirmatively answering the allegations of the petition, United States alleges that said Commission was fully empowered by the Interstate Commerce Act to make said order; that said order is valid, and is fully supported by substantial evidence duly submitted by the parties to the proceeding then pending before the Commission, and in which said order was entered; and United States denies each and every allegation to the contrary contained in the petition.

VII

Except as herein expressly admitted, United States denies the truth of each and every allegation contained in the petition.

Wherefore, having fully answered, United States prays that the relief sought be denied and the petition dismissed with costs to petitioner, and for the benefit of such other orders or decrees as the Court may deem just and proper in the premises.

(S.) Elmer B. Collins, Special Assistant to the Attorney General. (S.) John Lord O'Brian, Assistant to the Attorney General. (S.) Calvin S. Boyer, United States Attorney.

[fol. 1218] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 1219] IN UNITED STATES DISTRICT COURT

No. 5789

[Title omitted]

ORDER SUBSTITUTING TRIAL JUDGE

And now, to wit: March 26th, 1930, it is ordered that the Order of February 17th, 1930, in the above matter, be amended by substituting the name of Honorable Joseph Buffington in place and stead of Honorable Victor B. Woolley as therein contained.

By the Court:

(S.) J. W. Thompson, J.

[fol. 1220] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

ORDER CONTINUING THE TEMPORARY STAY OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed Apr. 15, 1930

Whereas, by Petition filed February 14th, 1930, the Petitioner, the Pennsylvania Warehousing and Safe Deposit Company, prayed this Court to set aside and annul an Order of the Interstate Commerce Commission entered in the matter of Walter A. Bailey and Terminal Warehouse Company against The Baltimore and Ohio Railroad Company, I. C. C. Docket No. 20968 (Sub. No. 1), and in the matter of Rex and Company, Inc. et al. against the Reading Company, I. C. C. Docket No. 20968 (Sub. No. 2), and also praying for a temporary stay or suspension of the operation of the said Order.

And whereas, this Court on February 21st, 1930, entered an Order staying and suspending the Order of the Interstate Commerce Commission for a period of sixty days from that date.

And whereas, a final hearing before this Court was held at Philadelphia, on March 26th, 1930.

And whereas, it appears that irreparable damage would ensue to the Petitioner, the Pennsylvania Warehousing and Safe Deposit Company, if the said Order of the Interstate Commerce Commission went into effect during the pendency of this litigation.

[fol. 1221] Now, therefore, this Court finds, based upon the evidence submitted to it that irreparable damage would ensue to the Petitioner, the Pennsylvania Warehousing and Safe Deposit Company, unless the operation of the said order is stayed or suspended during the pendency of this litigation.

It is therefore ordered, adjudged and decreed that the said Order of the Interstate Commerce Commission in the matters of Walter A. Bailey and Terminal Warehouse Company against The Baltimore and Ohio Railroad Company, I. C. C. Docket No. 20968 (Sub. No. 1), and Rex and Company, Inc. et al. against the Reading Company, I. C. C. Docket No. 20968 (Sub. No. 2) be and hereby is stayed and suspended until the further order of this Court.

Joseph Buffington, Circuit Judge. J. W. Thompson, District Judge. O. B. Dickinson, District Judge.

[fol. 1222] Opinion of the Court—Filed Oct. 8, 1930

Note.—This is the identical Opinion contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 63 of this consolidated record.)

[fol. 1223] Court's Findings of Fact and Conclusions of Law—Filed Nov. 5, 1930

Note.—This is the identical Document contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto (See Page 100 of this consolidated record).

[fol. 1224] Exceptions to Findings of Fact and Conclusions of Law—Filed Nov. 19, 1930

Note.—This is the identical document contained in record of Merchants Warehouse Company et al. v. United States,

et al., and is here incorporated by reference thereto (See page 107 of this consolidated record).

[fol. 1225] OPINION OF THE COURT SUR PETITION FOR ORDER OF SUPERSEDEAS—Filed Nov. 19, 1930

NOTE.—This is the identical Opinion contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 149 of this consolidated record.)

[fol. 1226] FINAL DECREE—Filed Nov. 19, 1930

NOTE.—This is the identical Decree contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 154 of this consolidated record.)

[fol. 1227] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Nov. 19, 1930

Petition for Appeal

Considering itself aggrieved by the decision of the United States District Court for the Eastern District of Pennsylvania, the Plaintiff therein, the Pennsylvania Warehousing and Safe Deposit Company, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Assignments of Error

And the said Pennsylvania Warehousing and Safe Deposit Company assigns the following errors in the record and proceedings in the said case:

1. The District Court erred in dismissing the bill.

2. The District Court erred in refusing to enjoin the order of the Interstate Commerce Commission entered in the case of Walter A. Bailey and Terminal Warehouse Company vs. Baltimore and Ohio Railroad Company, and in the case of Rex and Company, Inc. et al. vs. Reading Company.

[fol. 1228] 3. The District Court erred in its Finding of Fact Number 1 and in overruling the Plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 1, The said Finding is as follows:

. . . . . .

4. The District Court erred in its Finding of Fact Number 4 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 4, The said Finding of Fact is as follows:

. . . . . .

5. The District Court erred in its Finding of Fact Number 8 and in overruling the plaintiff's exception to that [fol. 1229] Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 8. The said Finding of Fact is as follows:

. . . . . .

6. The District Court erred in its Finding of Fact Number 9 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 9. The said Finding of Fact is as follows:

. . . . . .

7. The District Court erred in its Finding of Fact Number 10 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 10. The said Finding of Fact is as follows:

. . . . . .

[fol. 1230] 8. The District Court erred in its Finding of Fact Number 13 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 13. The said Finding of Fact is as follows:

. . . . . .

9. The District Court erred in its Finding of Fact Number 14, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

. . . . . .

10. The District Court erred in its Finding of Fact number 15, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exceptions are as follows:

The Court erred in Finding of Fact Number 15. The said Finding of Fact is as follows:

. . . . . .

11. The District Court erred in its Finding of Fact Number 16, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exceptions are as follows:

. . . . . .

[fol. 1231] 12. The District Court erred in its Finding of Fact Number 17, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 17. The said Finding of Fact is as follows:

. . . . . .

13. The District Court erred in its Finding of Fact Number 18, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 18. The said Finding of Fact is as follows:

. . . . . .

14. The District Court erred in its Finding of Fact Number 19, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in finding of Fact Number 19. The said Finding of Fact is as follows:

. . . . . .

15. The District Court erred in its Finding of Fact Number 20, and in overruling the plaintiff's exception to that finding. The Findings of Fact and the Exception are as follows:

[fol. 1232] The Court erred in Finding of Fact Number 20. The said Finding of Fact is as follows:

. . . . . .

16. The District Court erred in its Finding of Fact Number 21 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 21. The said Finding of Fact is as follows:

. . . . . .

17. The District Court erred in its Finding of Fact Number 26, and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 26. The said Finding of Fact is as follows:

. . . . . .

18. The District Court erred in its Finding of Fact Number 27, and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

. . . . . .

[fol. 1233] The Court erred in Finding of Fact Number 27. The said Finding of Fact is as follows:

. . . . . .

19. The District Court erred in its Conclusion of Law Number 1, and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 1. The said Conclusion of Law is as follows:

. . . . . .

20. The District Court erred in its Conclusion of Law Number 2, and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 2. The said Conclusion of Law is as follows:

. . . . . .

21. The District Court erred in its Conclusion of Law Number 3, and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

. . . . . .

22. The District Court erred in its Conclusion of Law Number 4, and in overruling the plaintiff's exception to the [fols. 1234 & 1235] Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 4. The said Conclusion of Law is as follows:

* * * * * * *

23. The District Court erred in its Conclusion of Law Number 5 and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 5. The said Conclusion of Law is as follows:

* * * * * * *

Prayer for Reversal

For which errors the Plaintiff, the Pennsylvania Warehousing and Safe Deposit Company, prays that the said decree of the United States District Court for the Eastern District of Pennsylvania, dated November 19th, 1930, in the above entitled case, be reversed and a decree rendered in favor of the said Plaintiff enjoining the said order of the Interstate Commerce Commission as therein prayed and for costs.

H. Edgar Barnes, H. Edgar Barnes, Attorney for Pennsylvania Warehousing & Safe Deposit Company.

[fol. 1236] Citation, in usual form, showing service on Elmer B. Collins et al., omitted in printing.

[fol. 1237] Service accepted this 19th day of November, 1930.

Elmer B. Collins, Esq., Counsel for Respondent United States of America. J. Stanley Payne, Counsel for Respondent Interstate Commerce Commission. John J. Hickey, Counsel for Intervening Respondents.

[fol. 1238] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

PETITION OF THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, THE PHILADELPHIA BOURSE, THE GROCERS & IMPORTERS EXCHANGE AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC. INTERVENERS IN BEHALF OF THE PLAINTIFF, FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Dec. 24, 1930.

Petition for Appeal

Considering themselves aggrieved by the decision of the United States District Court for the Eastern District of Pennsylvania, the Intervenors therein in behalf of the Plaintiffs, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., hereby pray that an appeal be allowed to the Supreme Court of the United States herein.

[fols. 1239 & 1240] Assignment of Errors

The said Intervenors in behalf of the Plaintiff The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., adopt as their own the Assignment of Errors heretofore filed by the Plaintiff.

Prayer for Reversal

For the said errors, the Intervenors in behalf of the Plaintiff, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., pray that the said decree of the United States District Court for the Eastern District of Pennsylvania, dated November 19th, 1930, in the above entitled cause, be reversed and a decree rendered in favor

of the said Plaintiffs, enjoining the said order of the Interstate Commerce Commission as therein prayed.

Allen S. Olmsted, 2nd., Attorney for Petitioner.

We hereby assent to the joining of above named as parties appellant without the filing of an additional bond.

Elmer B. Collins, for the Attorney General of the United States. John J. Hickey, for Intervenors in behalf of the Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission.

[fols. 1241-1243] Citation, in usual form, showing service on Elmer B. Collins et al., filed December 26, 1930, omitted in printing.

[fol. 1244] In United States District Court

In Equity. No. 5789

[Title omitted]

Order Allowing Appeal—Filed Dec. 24, 1930

The plaintiff in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided, and the said appeal having been allowed upon the filing of a bond in the sum of $2000 as security for costs, and the said bond having been filed by the said Plaintiff and The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. Intervenors in [fols. 1245 & 1246] behalf of the Plaintiff, having likewise prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a decree made

and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, having presented and filed their petition for appeal, assignment of errors and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal to the Supreme Court of the United States from the United States District Court for the Eastern District of Pennsylvania, in this cause, be and the same is hereby allowed to the said The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., Intervenors in behalf of the Plaintiff, and the said Intervenors in behalf of the Plaintiff are hereby joined as parties appellant to the said appeal heretofore allowed to the Plaintiff.

Joseph Buffington, C. J. J. W. Thompson, D. J.
O. B. Dickinson, P. J.

December 23, 1930.

[fols. 1247 & 1248] Bond on appeal for $2,000, approved and filed November 19, 1930, omitted in printing.

[fol. 1249] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

COPY OF NOTICE TO ATTORNEY GENERAL OF PENNA.—Filed Jan. 7, 1931

To the Attorney General of Pennsylvania:

Please take notice that The Pennsylvania Warehousing and Safe Deposit Company has taken an appeal to the Supreme Court of the United States from the decree of the District Court for the Eastern District of Pennsylvania in the above entitled cause, dismissing the prayer of the

Petitioner. Said prayer was to enjoin the order of the Interstate Commerce Commission in a certain proceeding entitled Walter A. Bailey, et al vs. Baltimore and Ohio Railroad Company, I. C. C. Docket No. 20968-Sub. No. 1., and Rex and Company, Inc. et al. vs. The Reading Company, I. C. C. Docket No. 20968-Sub. No. 2.

Very truly yours, H. Edgar Barnes, Attorney for Appellants.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

H. Edgar Barnes being duly sworn deposes and says that he served the notice, of which the above is a copy upon the Attorney General of the State of Pennsylvania, by sending the same by United States mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pennsylvania.

H. Edgar Barnes.

Sworn to and subscribed before me this 6th day of January, A. D. 1931. I am not a director or officer in the above corporation. Katharine G. Herzberg, Notary Public. My Commission expires February 21st, 1931.

[fol. 1250] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

ORDER ALLOWING APPEAL—Filed Nov. 19, 1930

The Plaintiff in the above entitled suit, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed its Petition for appeal, assignment of errors, and prayer for reversal, pursuant to the Statutes and the rules

of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the United States District Court for the Eastern District of Pennsylvania in this cause, as provided by law, and it is further ordered that the clerk of the Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date.

It is Further Ordered that the said Order of the Inter-
[fol. 1251] state Commerce Commission in the matters of Walter A. Bailey and Terminal Warehouse Company vs. Baltimore and Ohio Railroad Company, and Rex and Company, Inc. et al. vs. Reading Company, be and it hereby is stayed and suspended pending the determination of this appeal by the Supreme Court of the United States.

And it is Further Ordered that security for costs on appeal be fixed in the sum of $2,000.00.

Joseph Buffington. J. W. Thompson, D. J. O. B. Dickinson.

[fol. 1252] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

PETITION FOR CROSS-APPEAL BY UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, TERMINAL WAREHOUSE COMPANY, REX & COMPANY, INCORPORATED, JAMES GALLAGHER, NORTHEASTERN WAREHOUSE COMPANY AND INDUSTRIAL COLD STORAGE & WAREHOUSE COMPANY—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, feeling themselves aggrieved by the fol-

lowing, the third, paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, viz:

"It is Further Ordered that the said Order of the Interstate Commerce Commission in the matter of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company vs. Pennsylvania Railroad Company, be and it hereby is stayed and suspended pending the determination of this appeal by the Supreme Court of the United States."

[fol. 1253] pray a cross-appeal therefrom to the Supreme Court of the United States.

The particulars wherein they consider the foregoing paragraph erroneous are set forth in the assignment of error on file to which reference is hereby made.

They pray that a transcript of the record, pleadings, and papers on which the foregoing quoted order was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

John Lord O'Brian, Assistant to the Attorney General, for United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company.

[fol. 1254] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

ASSIGNMENT OF ERROR ON CROSS-APPEAL—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, interven-

ing respondents, now come, by their respective counsel, and, in connection with their petition for cross-appeal, file the following assignment of error on which they will rely in their cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, entered November 19, 1930:

The District Court erred in staying and suspending the Commission's order in the matter of Walter A. Bailey and Terminal Warehouse Company vs. Baltimore & Ohio Railroad Company, and Rex & Company, Incorporated et al. vs. The Reading Company, pending determination of the appeal by the Supreme Court of the United States.

[fol. 1255] Wherefore respondents and intervening respondents, and each of them, pray that said third paragraph of the order allowing appeal, entered November 19, 1930, be reversed, annulled, and set aside, with directions that the stay and suspension pending appeal shall be forthwith dissolved, and for such other and further orders as may be appropriate.

John Lord O'Brian, Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitor for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

[fol. 1255-a] In United States District Court

In Equity. No. 5789

[Title omitted]

Order Allowing Cross-appeal—Filed Jan. 7, 1931

In the above-entitled cause, United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Ware-

house Company, intervening respondents, having made and filed their petition praying a cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, and having also made and filed an assignment of error, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the cross-appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the Clerk [fol. 1256] is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said stay order was made and entered to the Supreme Court of the United States.

J. W. Thompson, J.

Jan. 7, 1931.

[fols. 1257 & 1258] Citation, in usual form, showing service on H. Edgar Barnes and Allen Olmsted, 2nd, filed Jan. 7, 1931, omitted in printing.

[fol. 1259] IN UNITED STATES DISTRICT COURT

In Equity. No. 5789

[Title omitted]

COPY OF NOTICE OF CROSS-APPEAL TO THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA—Filed Jan. 1, 1931

To the Honorable the Attorney General of the State of Pennsylvania, Harrisburg, Pa.:

You are hereby notified that the United States of America and the Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, in the above-entitled case, have taken a cross-appeal to the Supreme Court of the United States from the order of the District

Court made and entered November 19, 1930, which stayed and suspended the order of the Interstate Commerce Commission in the proceeding entitled Walter A. Bailey et al. v. The Baltimore & Ohio Railroad Company, Docket No. 20968, Sub-No. 1, made and entered December 28, 1929, pending determination of the appeal by the Supreme Court of the United States.

[fol. 1260] This notice is given to you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913 (ch. 32, 38 Stat. 208, 220, 221, U. S. C. Title 28, Sec. 47).

John Lord O'Brian, Assistant to the Attorney General, for the United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company.

[fol. 1261] STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

J. Stanley Payne being duly sworn according to law deposes and says that he is Solicitor for the Interstate Commerce Commission and that on behalf of United States of America, The Interstate Commerce Commission, Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, he served Notice of Cross Appeal, of which the above is a copy, upon the Attorney General of the State of Pennsylvania, by sending the same by United States Mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pennsylvania, on January 7, 1931.

(S.) J. Stanley Payne.

Sworn to and subscribed before me this 7 day of January, A. D. 1931. Clifford K. Cassel, Notary Public. Notary Public. My Commission Expires Jan. 16th, 1931.

[fol. 1262] ORDERS EXTENDING TIME FOR DOCKETING CASE ON APPEAL.—Filed Dec. 17, 1930, and Dec. 30, 1930

NOTE.—These are the identical Orders contained in record of Merchants Warehouse Company et al. v. United States et al., and are here incorporated by reference thereto. (See page 193-195 of this consolidated record.)

[fol. 1263] STIPULATION IN RE STATEMENT OF EVIDENCE.—Filed Jan. 7, 1931

NOTE.—This is the identical Stipulation contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See page 671 of this consolidated record.)

[fol. 1264] ORDER APPROVING STATEMENT OF EVIDENCE.—Filed Jan. 7, 1931

NOTE.—This is the identical Order contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 674 of this consolidated record.)

[fol. 1265] PRÆCIPE FOR TRANSCRIPT OF RECORD.—Filed Jan. 7, 1931

NOTE.—This is the identical Præcipe contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 1154 of this consolidated record.)

[fol. 1266] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA, DECEMBER TERM, 1929

No. 5791

THE PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, Plaintiff, and Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, The Association of Manufacturers' Representatives, Incorporated, Intervening Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants, and Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, Industrial Cold Storage & Warehousing Company, Walter A. Bailey, and Terminal Warehouse Company, Intervening defendants

John P. Connelly, Esq., Saul, Ewing, Remick & Saul, Esqs.

Elmer B. Collins, Esq.; J. Stanley Payne, Esq.; T. L. Reimel, Esq.; John J. Hickey, Esq.

DOCKET ENTRIES

Feb.	18, 1930.	Petition to annul etc. order of Interstate Commerce Commission filed.
"	18, "	Decree fixing Feb. 21, 1930 for hearing application for temporary stay of operation of order of Interstate Commerce Commission, filed.
"	20, "	Appearance of C. S. Foyer, Esq., for United States of America filed.
"	20, "	Order of Court substituting name of Hon. Oliver B. Dickinson in place of Hon. Wm. H. Kirkpatrick, filed.
"	21, "	Petition by Rex and Company, Inc., et al., for leave to intervene as defendants and Decree granting petition filed.
"	21, "	Decree granting temporary stay of Order of Interstate Commerce Commission, filed.
"	25, "	Answer of Rex and Company, Inc., et al., intervening defendants, filed.

Mar. 3, 1930. Appearance of T. L. Reimel, Esq., for Intervening defendants filed.

" 6. " Answer of Interstate Commerce Commission filed.

" 8. " Petition by Commercial Exchange of Philadelphia et al. for leave to intervene as party plaintiffs, filed.

[fol. 1267]

Mar. 15, 1930. Answer by United States of America, filed.

" 26, " Argued.

" 27, " Decree amending Decree of Feb. 17, 1930 by substituting name of Hon. Joseph Buffington in place of Hon. Victor B. Wooley, filed.

" 27, " Argument resumed.

" 28, " Argument concluded.

Apr. 15, 1930. Decree continuing temporary stay of order of Interstate Commerce Commission, filed.

Oct. 8, 1930. Opinion, Thompson, J. (Dickinson, J. concurring, Buffington J. dissenting) dismissing petition of Feb. 18, 1930, to enjoin defendants from enforcing Order of Interstate Commerce Commission, filed.

" 10, " Petition of Philadelphia Warehousing & Cold Storage Company for a re-hearing filed.

" 23, " Decree denying prayer of petition for rehearing filed.

Nov. 5th, 1930. Opinion, Thompson, J. sur findings of fact and conclusions of law filed.

" 14, " Petition for order staying enforcement of Interstate Commerce Commission pending appeal, filed.

" 18, " Answer of United States to petition for stay of Order of Interstate Commerce Commission pending appeal, filed.

" 19, " Exceptions by petitioner to findings of fact and conclusions of law, filed.

" 19, " Answer of Rex & Company, et al., intervening defendants to petition of Philadelphia Warehousing and Cold Storage Company for order staying enforcement of Order of Interstate Commerce Commission pending appeal, filed.

Nov. 19, 1930. Argued sur settlement of decree and petition for appeal to act as supersedeas.

" 19, " Final Decree dissolving temporary orders of Feb. 21, 1930, and April 15, 1930; staying and suspending Order of Interstate Commerce Commission of December 28, 1929; overruling plaintiffs exceptions to findings of fact and conclusions of law and conclusions of law and dismissing petition to enjoin defendants from enforcing Order of Interstate Commerce Commission of December 28, 1929, filed.

" 19, " Opinion (per curiam) granting order of supersedeas and allowing exception thereto, filed.

" 19, " Petition for appeal assignments of error and prayer for reversal of decree of November 19, 1930, filed.

" 19, " Decree granting petition for appeal, filed.

[fol. 1268]

Nov. 19, 1930. Bond sur appeal in $2000 with American Surety Company of New York surety, and Decree approving same, filed.

" " " Citation allowed and issued.

" " " Citation returned-service accepted-and filed.

Dec. 17, 1930. Decree extending time for docketing case in U. S. Supreme Court filed.

" 24, " Assignments of Error by Intervening plaintiffs filed.

" 24, " Prayer for reversal by Intervening plaintiffs filed.

" 24, " Petition for appeal by Intervening plaintiffs filed.

" 24, " Order of Court granting appeal filed.

" 24, " Citation allowed and issued.

" 26, " Citation returned: "service accepted" and filed.

" 30, " Decree enlarging time in which to file record with Clerk of Supreme Court of United States to January 10, 1931, filed.

Jan. 7, 1931. Copy of Notice to Attorney General of Pennsylvania of Petitioner's Appeal, and proof of service filed.
" " " Order of Court Consolidating this cause with Nos. 5781 and 5789 for purpose of trial, filed.
" " " Statement of Evidence in Narrative form, Stipulation of Counsel, and Order approving same, filed.
" " " Petition for Cross-Appeal by Respondents, filed.
" " " Assignment of Error on Cross-Appeal, filed.
" " " Order allowing Cross-Appeal, filed.
" " " Citation on Cross-Appeal allowed and issued.
" " " Citation returned "service accepted" and filed.
" " " Copy of Notice to Attorney General of Pennsylvania of Cross-Appeal, and proof of service, filed.
" " " Præcipe for Transcript of Record sur appeals, filed.

[fols. 1269 & 1270] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION—Filed Feb. 18, 1930

1. The petitioner above named brings this its petition against the defendants above named, for the purpose of enjoining, setting aside and annulling as hereinafter prayed, an order entered by the Interstate Commerce Commission hereinafter called the Commission, by Division 3 thereof, on the 28th day of December, 1929, in a proceeding then pending before the Commission, namely, Interstate Commerce Commission Docket No. 20968 (Sub. Div. No. 2) which was instituted by a complaint in which Rex & Company, Inc., et al were complainants, and Reading Com-
[fol. 1271] pany was defendant, and your petitioner was an intervenor.

2. Petitioner is a corporation duly organized and existing under the laws of Pennsylvania. It is engaged in the business of operating warehouses. Its principal office and all of its warehouses are in the City of Philadelphia in the said Eastern District of Pennsylvania.

3. United States of America is a necessary party defendant in a proceeding to enjoin, set aside and annul an order of the Interstate Commerce Commission under the provisions of the District Court Jurisdiction Act, approved October 22, 1913, (38 Stat. L., 219), U. S. Code, Title 28, Section 41, Sub Division 28, Sections 43 to 48. This suit is brought under the provisions of said act and also under the general equity jurisdiction of this Court.

4. The Interstate Commerce Commission is an administrative tribunal created by the Interstate Commerce Act, approved February 4, 1887, (24 Stat. L., 379), as amended, including amendments to said Act contained in the Transportation Act of 1920, approved February 28, 1920 (41 Stat. L., 456), under which said acts it assumed to proceed in rendering its said order on December 28, 1929, in the proceeding aforesaid.

5. Under its tariffs duly on file with the Interstate Commerce Commission the Reading Company assumes all obligations under its tariffs of loading and unloading package freight carried at carload ratings at certain of its Stations, and in said tariffs forty-eight (48) hours free storage is allowed by the Reading Company to Consignees, after [fol. 1272] the arrival of carload freight at any of the designated Stations; and the Reading Company is obliged by the provisions of its said tariffs as part of its transportation duties, under the Interstate Commerce Act, to store and protect such carload freight over said period of free time.

6. The Petitioner avers that the Reading Company has no control, either directly or indirectly in the operation, control or management of the Warehouse of your Petitioner, nor has it any pecuniary interest therein; that the Reading Company only uses the facilities of the warehouse and makes payments therefore as provided for in the Contract, and without which facilities the Reading Company would be obliged to provide a warehouse of its own, in

order to store and protect such carload freight as may be delivered to it, most of which requires "refrigeration".

7. The Petitioner and the Reading Company entered into a written Contract dated the 4th day of November, 1898, a copy of said Contract being hereunto attached, made part hereof and marked Exhibit "A".

That by reference to this Contract, the Warehousing Company was to build a Storage House over the tracks of the Railway Company, and for the use of the Railway Company, and was to be paid a certain sum of money as specified in the said Contract; and that the Warehousing Company was designated as the Agent of the Railway Company, for the collection of certain charges, and it was obliged to account for the same to the Railway Company.

This Contract was to run for a period of 99 years from its original date, with option of a further continuance of [fol. 1273] the said Contract for a further period of 99 years, as provided for in the said Contract.

That this Contract has been in effect from November 4, 1898, down to the present time, a period of nearly 32 years, and that the Contract is still in force and operation, and that your Petitioner and the Reading Company are operating under the terms and conditions of this Contract with the exception that the rate has been changed from 30¢ to 50¢ under which it is now operating, and the storage time has been reduced from ten (10) days to two (2) days covering merchandise not requiring cold storage, and that under the terms of this Contract your Petitioner has been obliged from time to time to expend large sums of money in order to keep said warehouse in "first class" condition to meet demands of the Reading Company in the receiving of the freight delivered to it by the Railway Company.

8. Included in the services of loading, unloading and "handling" freight for the Reading Company under its contract, the petitioner renders as agent of the Reading Company a variety of terminal services incident to the transportation duties of the Reading Company as a common carrier, such as: removing and recording the seals from car doors and preserving the record thereof; taking ice record of the amount of ice in refreigerator cars; examining the merchandise in the car and noting the damage and cause for same; prompt loading and unloading to

minimize the delay to the equipment; holding the shipment for forty-eight hours under refrigeration for merchandise requiring cold storage, including its protection against fire and by insurance; taking up the Bills of Lading and cancelling the same; delivering the merchandise to the con- [fol. 1274] signee and taking the receipt therefor.

9. All of said services covered by the said contract and rendered by the petitioner are transportation services as defined by Section 1 of the Interstate Commerce Act, and as to all of them, the Reading Company is under legal obligation to perform them or cause them to be performed, and the payment and consideration provided in said contract, are made for the performance by the petitioner of said transportation services as the duly designated agent of the Reading Company. No payment of any kind, direct or indirect, is made by the Reading Company to the petitioner except the payments for the said transportation services.

10. The petitioner has performed its obligations under said contract with care and fidelity and to the satisfaction of the Reading Company and of the public. It has received as payment for its services under the said contract approximately $20,000 per year.

11. By complaint dated April 26, 1928, Rex & Company, Inc., et al., brought complaint before the Interstate Commerce Commission, which complaint was docketed by the Commission as Docket 20968 (Sub. Div. No. 2). The complaint avers that the Complainants with others, own and operate warehouses in Philadelphia in competition with your Petitioner; that said Complainants with others and your Petitioner, were shippers within the meaning of the Interstate Commerce Act, and that the Reading Company in the form of traffic allowances, was refunding to the Petitioner part of the published rates and was collecting from [fol. 1275] the Petitioner a less compensation than it collected, and was collecting from the Complainant and others for rendering like and contemporaneous services under substantially similar circumstances and conditions, in violation of Sections 2 and 3 of the Interstate Commerce Act. At the same time James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and Terminal Warehouse Company, brought complaint before the Interstate

Commerce Commission against the Pennsylvania Railroad, which Complaint was docketed by the Commission as Docket No. 20968, and at the same time Walter A. Bailey and others complained of similar payments to other warehouses by the Baltimore & Ohio Railroad Company, which complaints were docketed by the Interstate Commerce Commission as Docket No. 20968, Sub. #1 and 20968, Sub. #2 respectively.

12. Thereafter the Reading Company answered denying the charges of violation of the Interstate Commerce Act. Your petitioner petitioned the Interstate Commerce Commission for leave to intervene. The Commercial Exchange of Philadelphia, The Grocers and Importers Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Inc., also petitioned the Commission for leave to intervene in the case averring that the arrangements complained of had been in effect for many years, and had added greatly to economy, convenience and expedition in the handling of freight and that interference with the arrangement would be greatly prejudicial to the business interests of Philadelphia. Said petitions were granted by the Commission.

[fol. 1276] 13. Thereafter the Commission consolidated the three cases above named and set them all for hearing before an Examiner of the Commission on July 30, 1928. On the said date and subsequent dates, the complainants, the defendants, and the intervenors presented testimony before the said Examiner. A copy of the transcript of said testimony, the exhibits (including the contract between the petitioner and the Reading Company), the complaint, the answer, the petitions of intervenors and the order of the Commission therein, will be offered in evidence at the hearing of this petition.

14. Thereafter, to wit, on December 28, 1929, the said Division 3 of the Commission (under the Interstate Commerce Act as amended) acting by Commissioners Aitchison and Porter and empowered to act on behalf of the Commission, filed a Report and Order in the matter. One Report and one Order was made to cover all three complaints. A copy of said complaint and order is attached hereto and made a part hereof.

15. By the said order which was to become effective on February 10, 1930, (and by subsequent action was, upon the petition of your petitioner, postponed until February 25, 1930), the Reading Company is required to cease, desist and abstain from making the payments to your petitioner which it has contracted to make and is required to cancel its tariff provisions which make the warehouses of petitioner a part of the Reading Company's station facilities at Philadelphia.

16. Thereafter your petitioner petitioned for a rehearing or reargument before the full Commission. Said petition was denied by the Commission on Februrary 11, 1930. [fol. 1277] With the deniel of the said petition, Petitioner's remedies before the Interstate Commerce Commission were exhausted.

17. Petitioner charges and avers:

(a) The Commission's order in the premises aforesaid is invalid and of no legal force or authority, and therefore the same should be declared to be null, void, and of no effect.

(b) As appears from the proceedings of the Commission, as set forth in its report, said order proceeds upon the conclusion of the Commission that petitioner is to be deemed the consignor of shipments from and consignee of shipments to its warehouses. The said conclusion on the part of the Commission is not substantiated by any evidence produced before it, but is contrary to and inconsistent with all the evidence adduced in said proceedings and is inconsistent with recognized principles of law defining and creating the relations of shipper, consignor and consignee with a common carrier. In fact and in law the petitioner is not in any legal sense within the meaning and intent of the Interstate Commerce Act or otherwise, a shipper, consignor, or consignee in respect to any of the property with regard to which it receives a payment from the Reading Company.

(c) As appears from the said report, the order proceeds upon the conclusion that the facilities of petitioner's warehouses were only nominally opened to the general public as Railroad freight stations and were not, in fact, public sta-

tions in that they were confined to the handling of merchandise for the patrons of the Warehouses; whereas the evidence shows that some of the warehouses operated by the [fol. 1278] petitioner are the property of the carrier, are recognized public stations opened to the general public and that all of such warehouses are and have been for many years actually used by the public. The Commission proceeds upon the erroneous legal proposition that a warehouse by tariff publication open to all of the public and actually used by such portion of the public as are patrons of the warehouse, is not, in true contemplation of law, a public station.

(d) As appears from the report of the Commission said order proceeds upon the conclusion of the Commission that the services performed by the petitioner in connection with the loading and unloading of freight are, in fact, performed for the benefit of the owners of the merchandise rather than for the Railroad. The undisputed evidence shows that the Railroad Company undertakes by its tariff to load and unload the freight and the said service is therefore not "performed for the benefit of the owners of the merchandise" in any other sense than all transportation services benefit the owners of the merchandise. The said order proceeds upon the erroneous proposition of law that the Railroad Company cannot pay its agent for rendering a transportation service if that service is performed for the benefit of the owners of the freight.

(e) As appears from the report of the Commission said order proceeds upon the conclusion that the petitioner had been given dominion over the goods for transportation purposes and accordingly for transportation purposes it should be deemed the consignor of shipment, from or the consignee of shipments to its warehouses. The undisputed evidence shows that as to inbound freight, peti- [fol. 1279] tioner is not "given dominion over" the goods by the owner thereof, but receives them from the Railroad Company in order that petitioner may perform the transportation service for which the Railroad Company had obligated itself. As to outbound goods, the evidence shows that the petitioner "is given dominion over" the goods by

the owner thereof for warehousing purposes and not for transportation purposes and receives no compensation from the Railroad Company for the rendition of such services. The order is based upon the erroneous proposition of law that petitioner may be "deemed" consignor or consignee of shipments as to which it is neither consignor nor consignee.

(f) As appears from the report of the Commission, said order proceeds upon the conclusion that the practice of the Railroad Company in making payments to the petitioner for loading or unloading package freight while refusing to make similar payments to the complainants resulted in unjust discrimination between the petitioner and the complainants, in undue preference to the petitioner, and in undue prejudice to the complainants. If petitioner and complainants were within the contemplation of Sections 2 and 3 of the Interstate Commerce Act and if such discrimination, preference or prejudice were undue and unjust, the same could be removed as a matter of law by giving allowances to both the petitioner and the complainants. The order of the Commission does not permit such a method of removing the alleged unjust discrimination, undue preference and undue prejudice. The order is based upon the erroneous proposition of law that unjust discrimination, undue preference and undue prejudice, if they exist, cannot be removed by an order permitting the defendant to make to complainants payments similar to those made to petitioner.

[fol. 1280] (g) As appears from the report of the Commission, the said order proceeds upon the conclusion that the payments made to petitioner are nothing more than a device or attempt to lend legality to the payment of rebates to the petitioner. A rebate is a deduction from the published rate which finds its way into the pocket of the consignor, consignee or owner of the freight. The undisputed evidence shows that petitioner is not the owner, consignor or consignee of the freight and that the consignor, consignee or owner of the freight in every instance pays the full published tariff rate, and receives no rebate or drawback therefrom. The order is based upon the erroneous proposition of law that a payment made by a railroad to

its agent for the rendition of a transportation service is the payment of a rebate to a shipper.

(h) The order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to interfere with the right of a carrier to employ exclusively a particular agent or agents to perform transportation service which the carrier is required to perform either under its tariff or by virtue of its common law or statutory duties and obligations.

(i) The said order is beyond the jurisdiction and beyond the power of regulation conferred upon or vested in the Commission for the reason that the Interstate Commerce Act delegates no power to the Commission to supervise, control or regulate the designation by carriers of terminal stations or of the internal management of said stations, or of the payment of compensation for the internal management of said stations.

[fol. 1281] 18. The said order of the Commission unless set aside and annulled by this Court will operate to deprive the petitioner of the enjoyment of its rights under its said contract with the Reading Company, and will, in fact, completely destroy said contract and all property rights of the petitioner therein. By force of said order, the Reading Company will be constrained by the Commission to nullify or break its said contract with the petitioner or terminate it and your petitioner is informed and believes that the Reading Company acting under the compulsion and duress of said order, will be required to nullify and set aside its contract with petitioner.

Petitioner therefore avers for the reasons aforesaid that the said order of the Commission is in violation of the Constitution of the United States and the amendments thereto, for the reason that it will deprive the petitioner of its property without due process of law and will abrogate the obligations of an existing contract.

19. The practice of unloading the carload freight at Petitioner's warehouse and other contract warehouses in the City of Philadelphia at the cost of the carriers has been in

effect in Philadelphia for many years, in some cases, as long as forty years. During that time the trade has accustomed itself to that practice and merchants have made arrangements with their purchasers, sellers and principals, based on the continuance thereof. The prohibition of the continuance of that practice during the period when the legality of the Commission's order is under consideration by the Court would throw the entire trade into confusion and would cause irreparable damage to your petitioners as well as to the mercantile interests of Philadelphia generally.

[fol. 1282] 20. If a temporary stay or suspension, or interlocutory injunction or restraining order pending a final decree in this case is not granted, Reading Company will amend its published tariffs on file with the Commission, so as no longer to undertake to unload carload package freight at the stations and warehouses operated by petitioner, and so as no longer to provide for the payment of compensation to petitioner and it will cease to pay to the petitioner the compensation provided for in the contract above mentioned. Petitioner will thereupon be under the compulsion of making changes in the schedule of charges which it must collect from its customers and otherwise disturb and amend its established practices in conducting its warehouse business as aforesaid which changes in business methods will tend to disrupt the business of petitioner in a manner that cannot be compensated for in damages if and when the Courts shall decide upon a final hearing that the order of the Interstate Commerce Commission is invalid.

Therefore petitioner prays:

1. That upon the filing of this bill the Judge of this Court call to his assistance two other Judges, one of whom shall be a Circuit Judge in accordance with the Act of Congress approved October 22, 1913, 38 Statutes 220 U. S. Code Title 28, Section 47.

2. That after no less than three days' notice to the Interstate Commerce Commission, and the Attorney General of the United States, there be ordered and granted by the Court a temporary stay or suspension of the operation of the order of the Commission entered December 28, 1929, in

the matter of Rex & Company, Inc., et al vs. Reading Com-
[fol. 1283] pany, I. C. C. Docket No. 20968 (Sub. No. 2) for sixty days from the date of the said order, as provided in Section 47 of Title 28, of the United States Code.

3. That upon not less than five days' notice, to the Interstate Commerce Commission, to the Attorney General of the United States, and to the Defendant Reading Company, an interlocutory injunction be issued suspending or restraining the enforcement, operation or execution of the said order until the further order of this Court.

4. That upon final hearing, this Court adjudge, order and decree that said order of the Interstate Commerce Commission dated December 28, 1929, is null and void and without warrant in law and that the same be set aside and annulled and that the United States of America and the Interstate Commerce Commission, and each of them be perpetually restraind and enjoined from enforcing said order.

5. That your petitioner may have such other and further relief as to equity may appertain and as may be deemed by this Honorable Court fit and proper.

Philadelphia Warehousing & Cold Storage Company, by J. A. Geisz, President. John P. Connelly, Solicitor for Petitioner, 1526-27 Land Title Bldg., Phila., Pa.

[fols. 1284-1313] *Duly sworn to by J. A. Geisz. Jurat omitted in printing.*

[fol. 1314] UNITED STATES DISTRICT COURT

[Title omitted]

Before Thompson, J.

DECREE, AS AMENDED, FIXING TIME FOR HEARING, ETC.—Filed Feb. 18, 1930

Whereas it appears that this is a proceeding for a final decree to set aside and annul an order of the Interstate Commerce Commission made in the matter of Walter A.

Bailey and Terminal Warehouse Company against The Baltimore & Ohio Railroad Company, Interstate Commerce Commission Docket No. 20968 (Sub. No. 1); and in the matter of Rex & Company, Inc.; James Gallagher; Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company; and Industrial Cold Storage & Warehouse Company against the Reading Company, Interstate Commerce Commission Docket No. 20968 (Sub. No. 2), entered on the 28th day of December, 1929, to become effective on the 10th day of February, 1930, which effective date, by a subsequent order of the said Commission, was postponed until the 25th day of February, 1930.

And whereas it appears that the petitioner herein asks for a temporary stay or suspension of the operation of the order of the said Commission.

And whereas it further appears that under the provisions of the United States Code, Title 28, Section 47, the hearing in this Court is directed to be before a court consisting of [fol. 1315] three Judges, one of whom shall be a Circuit Judge.

Now, therefore, it is ordered this 17th day of February, 1930, by the District Court of the United States for the Eastern District of Pennsylvania, that the following Judges be called to my assistance to hear and determine the said application, to wit: United States Circuit Judge Victor B. Woolley and United States District Judge Oliver B. Dickinson.

It is further ordered that the application for a temporary stay be set for hearing before said Court on the 24th day of February, 1930, at 10 o'clock, at Philadelphia.

It is further ordered that immediate notice of the said hearing be given by the petitioner to the Interstate Commerce Commission and to the Attorney General of the United States by telegraph and by registered mail or by personal delivery.

By the Court.

Attest:

(S.) George Brodbeck, Clerk.

[fol. 1316] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION FOR LEAVE TO INTERVENE—Filed Feb. 21, 1930

To the Honorable the Judges of said Court:

The petition of Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company, shows unto this Court as follows:

Your petitioner Walter A. Bailey is an individual, trading and doing business under the name and style "Bailey Warehouses"; your petitioner James Gallagher is an individual, trading and doing business under the name and style "Gallagher's Warehouses"; and your petitioners Rex and Company, Inc., Northeastern Warehouse Company, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company, are Corporations duly organized and existing under the laws of the Commonwealth of Pennsylvania, each of said petitioners having its principal place of business in the City of Philadelphia, Pennsylvania. The above-entitled proceeding grew out of the complaint in which Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company were complainants, the Reading Company was defendant, and The Philadelphia Warehousing & [fol. 1317] Cold Storage Company was intervener, before the Interstate Commerce Commission, Docket No. 20968 (Sub. No. 2), and as a result of the hearing of the said complaint, an order was passed by the Interstate Commerce Commission, a copy of which is attached to the petition of The Philadelphia Warehousing & Cold Storage Company in this proceeding; that this proceeding is brought by The Philadelphia Warehousing & Cold Storage Company to set aside the said order of the Interstate Commerce Commission; that your petitioners are deeply interested in and affected by the said order of the Interstate Commerce Commission; that it is necessary for the protection of the inter-

ests and rights of your petitioners that your petitioners be made parties to this proceeding.

Your petitioners desire to intervene in this proceeding as parties defendant for the purpose of being heard and protecting their rights.

Wherefore your petitioners pray that an order may be passed by this Honorable Court permitting your petitioners to intervene as parties defendant in the above-entitled proceeding.

Rex and Company, Inc., by Frank E. Klinger, Secretary. James Gallagher, by James Gallagher, Jr. Northeastern Warehouse Company, by Blair R. Miller, Supt. Walter A. Bailey, by Walter A. Bailey. Terminal Warehouse Company, by Ernest V. D. Sullivan, Pres. Industrial Cold Storage and Warehouse Company, by J. A. Mooney, Gen'l Mgr. (S.) John J. Hickey, Solicitor for the Petitioner: (S.) Theodore L. Reimel, Local Counsel.

[fol. 1318] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

Before Woolley, C. J., and Thompson and Dickinson, D. J.

ORDER GRANTING LEAVE TO INTERVENE—Filed Feb. 21, 1930

On the foregoing petition it is on this 21st day of February, 1930, by the District Court of the United States for the Eastern District of Pennsylvania, ordered:

That Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company, be permitted to intervene in the proceedings of the above-entitled case as parties defendant for the purpose of being heard and protecting their rights.

By the Court.

Attest:

(S.) Theodore L. Cobaugh, Deputy Clerk.

[fol. 1319] IN UNITED STATES DISTRICT COURT

No. 5791. In Equity

[Title omitted]

ORDER ALLOWING A TEMPORARY STAY OF THE OPERATION OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION— Filed Feb. 21, 1930

Whereas, by petition filed February 18, 1930, the Petitioner, The Philadelphia Warehousing & Cold Storage Company, prays the District Court to call to its assistance two other Judges, one of whom shall be a Circuit Judge, in accordance with Title 28, Section 47 of the United States Code, and prays that this Court set aside and annul an order of the Interstate Commerce Commission entered in the matter of Rex & Co. Inc., et al. against the Reading Company, I. C. C. Docket #20968 (Sub. No. 2) and also praying for a temporary stay or suspension of the operation of the said order.

And whereas, it appears that the said order of the Interstate Commerce Commission is to become effective February 25, 1930.

And whereas, on February 17, 1930, the Honorable J. Whitaker Thompson entered an order calling to his assistance United States Circuit Judge Victor B. Woolley, and United States District Judge Oliver B. Dickinson, to hear and determine the said application and setting the application for a temporary stay for hearing before the said special court on February 21, 1930.

And whereas, it appears that notice of the said hearing was given by the Petitioner to the Attorney General of the [fol. 1320] United States and to the Interstate Commerce Commision, by letter dated February 18, 1930.

And whereas, a hearing was held upon the said application for a temporary stay in the Court Rooms of the United States Circuit Court of Appeals at Philadelphia, on February 21, 1930, before the said special Court, at which time Witnesses on behalf of the Petitioner were examined under oath.

Now, therefore, this Court finds, based upon the evidence submitted to the Judges comprising the said special Court

at the said hearing on February 21, 1930, that irreparable damage would ensue to the Petitioner, The Philadelphia Warehousing & Cold Storage Company, unless the operation of the said order is stayed or suspended in whole during the pendency of this petition before this Court.

And it is therefore Ordered, Adjudged and Decreed that the said order of the Interstate Commerce Commission in the matter of Rex & Co., Inc., et al. vs. Reading Company, I. C. C. Docket #20968 (Sub. No. 2) be stayed and suspended in whole for a period of sixty days from the date hereof.

It is further Ordered, Adjudged and Decreed that the said petition be set for final hearing before this special Court at Philadelphia in the Court Rooms of the Circuit Court of Appeals for the third circuit on the 26th day of March next, at 10 A. M.

(S.) Victor B. Woolley, Circuit Judge. (S.) J. W. Thompson, District Judge. (S.) O. B. Dickinson, District Judge.

Service accepted.

(S.) J. Stanley Payne, for Interstate Commerce Comm. (S.) Elmer B. Collins, for United States of America.

[fol. 1321] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

ANSWER OF THE INTERVENERS—Filed Feb. 25, 1930

Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company, Industrial Cold Storage and Warehousing Company, Walter A. Bailey and Terminal Warehouse Company, interveners, for answer to the petition filed herein by The Philadelphia Warehousing and Cold Storage Company, petitioner, say:

1. Answering paragraphs 1, 2, 3 and 4 of the petition, said interveners admit, for the purposes of this suit, that

the allegations in those four paragraphs are true, except that said interveners deny that this suit was instituted or may be maintained under the general equity jurisdiction of the District Court of the United States for the Eastern District of Pennsylvania.

2. Answering paragraphs 5 and 6 of the petition, said interveners deny the truth of each and all of the allegations made in those two paragraphs.

3. Answering paragraph 7 of the petition, said interveners admit that the contract was entered into and said interveners deny the truth of each of the other allegations in paragraph 7 of the petition.

4. Answering paragraphs 8, 9 and 10 of the petition, said interveners deny the allegations presented in those three paragraphs.

5. Answering paragraphs 11 and 12 of the petition, said interveners admit that the allegations made in those two paragraphs are true.

6. Answering paragraph 13 of the petition, said inter- [fol. 1322] veners admit that the allegations in that paragraph are true with the exception that said interveners do not, and cannot admit that the petitioner will offer certain evidence at the hearing of the petition.

7. Answering paragraphs 14, 15 and 16 of the petition, said interveners admit the truth of the allegations in those four paragraphs.

8. Answering paragraphs 17, 18, 19 and 20 of the petition, said interveners deny the truth of the allegations in those four paragraphs.

9. Further in answer to paragraphs 7, 8, 9, 10, 17(b), 17(g) and 18 of the petition, it appears that the petitioner does not assert the rights of a shipper, rate payer or carrier that can be directly affected by the measure of freight rates or an order of the Interstate Commerce Commission directed to any matter arising under sections 2 or 3 of the Interstate Commerce Act. The petitioner seeks an adjudication of certain contracts and of a question relating to compensation for services alleged to have been performed

by the petitioner for the Reading Company. This court, constituted by virtue of the Act of Congress, approved October 22, 1913, 38 stat. 220, is without authority to pass on such questions as to contracts and compensation.

10. Further answering the petition, said interveners deny any and all allegations therein, other than those expressly admitted above.

11. Further answering the petition, said interveners say that the Interstate Commerce Commission is fully empowered to make the order challenged in the petition; that said order is valid and is supported by substantial evidence, and that the petitioner has not shown that said order is invalid or is without substantial support of evidence.

Wherefore, having fully answered the petition, said interveners pray that the prayer of petitioner be denied and that the petition be dismissed at the cost of the petitioner.

Rex and Company, Inc., Northeastern Warehouse Company, James Gallagher, Walter A. Bailey, In-
[fol. 1323] dustrial Cold Storage and Warehouse Co., Terminal Warehouse Company, Interveners.
(S.) John J. Hickey, Solicitor for the Interveners, 800 Southern Building, Washington, D. C. Theodore L. Reimel, Local Counsel.

[fol. 1324] In United States District Court

[Title omitted]

Answer of Interstate Commerce Commission—Filed Mar. 6, 1930

The Interstate Commerce Commission, respondent in the above-entitled suit, hereinafter called the Commission, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioner's petition contained, for answer thereunto, or unto so much or such parts thereof, as it is advised that it is material for it to answer, answers and says:

I

Answering paragraphs 1, 2, 3, and 4 of the petition, the Commission admits, for the purposes of this suit, that the allegations therein contained are true, except that the Commission denies the suit was commenced or may be maintained under the general equity jurisdiction of the District Court.

II

Answering paragraphs 5 to 20, both inclusive, of the petition, the Commission admits, for the purpose of this suit, that the allegations contained in paragraphs 11, 12, 13, 14, [fol. 1325] 15, and 16 are true, and admits and alleges that it made the report and order dated December 28, 1929, in a proceeding then pending before it entitled James Gallagher et al. v. Pennsylvania Railroad Company, Docket No. 20968, which proceeding also embraced No. 20968, Sub. No. 1, Walter A. Bailey et al. v. Baltimore & Ohio Railroad Company, and No. 20968, Sub. No. 2, Rex & Company, Inc., et al. v. Reading Company, a copy of which report and order is appended to and made a part of the petition; that the Commission refers the court to the text of said report and order for full, complete, and accurate information concerning the contents of said report and order and for a description of the proceedings before the Commission upon which the report and order were and are based.

The Commission further alleges that at the hearings referred to in paragraph 13 of the petition, in connection with the subject matters covered by said report and order, the Commission accorded to all interested parties, including petitioner herein, a full and fair opportunity to be heard; that at said hearings a large volume of testimony and other evidence bearing upon said matters was submitted to the Commission for consideration on behalf of said parties, including the petitioner herein, by their respective counsel; that at said hearings and subsequently, both orally and in briefs filed in said proceedings, questions relating to said matters were fully argued and submitted to the Commission for determination on behalf of said parties by their respective counsel, whereupon the Commission determined said matters and made and entered said report and order, which included the Commission's findings of fact, decision, conclusions, orders, and requirements in the premises, and

that, upon the evidence aforesaid, and as shown in and by said report, the Commission made the findings and stated the conclusions upon which said order is based.

[fol. 1326] The Commission further alleges that the findings and conclusions in said report of December 28, 1929, were and are, and that each of them was and is fully supported and justified by the evidence submitted to the Commission in said proceedings as aforesaid.

The Commission further alleges that in making said report of December 28, 1929, it considered and weighed carefully in the light of its own knowledge and experience, each fact, circumstance, and condition called to its attention on behalf of the parties in said proceeding by their counsel, including matters covered by the allegations of the petition herein.

The Commission further alleges that said order of December 28, 1929, was not made or entered either arbitrarily, or unjustly, or contrary to the relevant evidence, or without evidence to support it; that in making said order the Commission did not exceed the authority which had been duly conferred upon it and the Commission denies each of and all the allegations to the contrary contained in the petition.

III

Further answering paragraphs 17, 18, 19, and 20 of the petition, the Commission denies that said order of December 28, 1929, is either unlawful or void, for the reasons, or for any of the reasons, set forth in said paragraphs. The Commission particularly denies that the petitioner will suffer either irreparable damage or irreparable injury as alleged in paragraphs 18, 19, and 20 of the petition unless said order of December 28, 1929, is enjoined and set aside by the court.

Except as herein expressly admitted, the Commission denies the truth of each of and all the allegations contained in the petition in so far as they conflict with the allegations herein, or with either the statements or conclusions of fact [fol. 1327] included in said report and order of December 28, 1929, which report and order are hereby referred to and made a part hereof.

All of which matters and things the Commission is ready to aver, maintain, and prove as this Honorable Court shall direct, and hereby prays that said petition be dismissed.

Interstate Commerce Commission, by J. Stanley Payne, Assistant Chief Counsel. Daniel W. Knowlton, Chief Counsel, of Counsel.

Duly sworn to by Claude R. Porter. Jurat omitted in printing.

[fol. 1328] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION OF COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' AND IMPORTERS' EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, PHILADELPHIA BOURSE, AND THE ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INCORPORATED, FOR LEAVE TO INTERVENE AND ORDER PERMITTING INTERVENTION—Filed Mar. 8, 1930

Now come the Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and the Association of Manufacturers' Representatives, Incorporated and respectfully petitions the Court for leave to intervene in the above case in accordance with Section 212 of the Act approved October 22, 1913, 39 Stat. 219 U. S. Code, Title 28, Section 45a, and as reason therefore aver:

Petitioners were parties in interest to the proceeding before the Commission, to wit: James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company, vs. Pennsylvania Railroad Company, I. C. C. Docket #20968, having been permitted to intervene by the Commission. They presented evidence before the Commission, appeared by counsel, filed briefs, and participated in the oral argument before the Commis- [fols. 1329 & 1330] sion. They are Corporations and Associ-

ations who are interested in the controversy or question before the Interstate Commerce Commission.

Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Association of Manufacturers' Representatives, Incorporated, by Allen S. Olmsted, 2nd, Attorney.

Before Woolley, C. J., and Thompson and Dickinson, D. J.

Order

And now, to wit, this 21st day of February, upon motion of Allen S. Olmsted, 2nd, Esquire, the said Commercial Exchange of Philadelphia Grocers' and Importers' Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, and Association of Manufacturers' Representatives, Incorporated, are permitted to intervene in the above case as parties plaintiff with right to appear by counsel and present testimony.

By order of the Court.

Attest: (Sgd.) George Brodbeck, Clerk.

[fol. 1331] In United States District Court

In Equity. No. 5791

[Title omitted]

Answer of the United States of America—Filed Mar. 15, 1930

United States, one of the respondents in the above entitled case, for answer to the petition heretofore filed against it says:

I

United States admits for the purposes of this suit the matters and conclusions alleged in paragraphs 1, 2, 3 and 4 of the petition, except that it denies that the suit was commenced or can be maintained under the equity jurisdiction of this Court.

II

United States denies the allegations of paragraphs 5 and 6 of the petition, except this: (a) It admits that the Reading Company has on file with the Interstate Commerce Commission the tariffs mentioned in said paragraphs, and (b) It admits the averment that the Reading Company "has no control, either directly or indirectly in the operation, control or management of the Warehouse of your Petitioner, nor has it any pecuniary interest therein."

[fol. 1332] III

Answering paragraphs 7, 8 and 9 of the petition, United States admits that petitioner and the Reading Company entered into the contract annexed as Exhibit "A" to the petition, and respectfully refers the Court to that exhibit for complete and accurate information concerning the provisions of said contract; but United States denies that the alleged "services" described in said paragraphs are performed by petitioner for the Reading Company; and alleges that petitioner performs said services in the conduct and as part of its own private merchandise warehouse business; and, further, alleges that they are not services for which the Reading Company may lawfully make payment to petitioner of the amounts named in said paragraph 7, or any other amount, or for which petitioner may lawfully receive those, or any other amounts, from the Reading Company. Except as so admitted, United States expressly denies each and every allegation of said paragraphs 7, 8 and 9.

IV

Answering paragraph 10, of the petition, United States admits that petitioner receives large sums of money annually from the Reading Company, but denies that the alleged services therein mentioned are performed for the Reading Company; and alleges that they are not services for which said sums, or any other sum, may lawfully be paid by the Reading Company to, or lawfully received by petitioner from said Company.

V

United States admits for the purposes of this suit the allegations of paragraphs 11 to 16, both inclusive, of the petition.

VI

Answering paragraphs 17, 18, 19 and 20 of the petition, [fol. 1333] United States denies that the order of the Commission therein mentioned is invalid, of no legal force, null, void, or in violation of the Constitution of the United States for the reasons set forth and alleged in those paragraphs, or for any other reason; and particularly denies that petitioner will suffer irreparable damage or other legal injury if said order is not temporarily stayed, suspended or restrained.

VII

Further and affirmatively answering the allegations of the petition, United States alleges that said Commission was duly empowered by the Interstate Commerce Act to make said order; that said order is valid, and is fully supported by substantial eivdence duly submitted by the parties to the proceeding then pending before the Commission and in which it entered said order; and United States denies each and every allegation to the contrary contained in the petition.

VIII

Except as herein expressly admitted, United States denies each and every allegation contained in the petition.

Wherefore, having fully answered, United States prays that the relief sought be denied and the petition dismissed with costs to petitioner, and for the benefit of such other orders or decrees as the Court may deem just and proper in the premises.

(S.) Elmer B. Collins, Special Assistant to the Attorney General. (S.) John Lord O'Brian, Assistant to the Attorney General. (S.) Calvin S. Boyer, United States Attorney.

[fol. 1334] *Duly sworn to by Elmer B. Collins. Jurat omitted in printing.*

[fol. 1335] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

ORDER SUBSTITUTING TRIAL JUDGE—Filed Mar. 27, 1930

And now, to wit, March 26, 1930, it is Ordered that the Order of February 17, 1930, in the above matter, be amended by substituting the name of Honorable Joseph Buffington in place and stead of Honorable Victor B. Woolley as therein contained.

By the Court.

(S.) J. W. Thompson, J.

[fol. 1336] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791.

[Title omitted]

ORDER CONTINUING THE TEMPORARY STAY OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION—Filed Apr. 15 1930

Whereas, by petition filed February 17, 1930, the Petitioner, The Philadelphia Warehousing & Cold Storage Company, prayed this Court to set aside and annul an order of the Interstate Commerce Commission entered in the matter of Rex & Company, Inc., et al against the Reading Company, I. C. C. Docket #20968 (Sub. Div. No. 2), and also praying for a temporary stay or suspension of the operation of the said order;

And whereas, this Court on February 21, 1930, entered an order staying and suspending the order of the Interstate Commerce Commission for a period of sixty days from that date;

And whereas, a final hearing before this Court was held at Philadelphia, on March 26, 1930;

[fol. 1337] And whereas, it appears that irreparable damage would ensue to the Petitioner, The Philadelphia

Warehousing & Cold Storage Company if the said order of the Interstate Commerce Commission went into effect during the pendency of this litigation;

Now, therefore, this Court finds, based upon the evidence submitted to it that irreparable damage would ensue to the Petitioner, The Philadelphia Warehousing & Cold Storage Company, unless the operation of the said order is stayed or suspended during the pendency of this litigation;

It is therefore ordered, adjudged and decreed that the said Order of the Interstate Commerce Commission in the matter of Rex & Company, Inc. et al vs. the Reading Company, I. C. C. Docket #20968 (Sub. Div. No. 2) be and hereby is stayed and suspended until the further Order of this Court.

(S.) Joseph Buffington, Circuit Judge. (S.) J. W. Thompson, District Judge. (S.) O. B. Dickinson, District Judge.

[fol. 1338] OPINION OF THE COURT—Filed Oct. 8, 1930

NOTE.—This is the identical Opinion contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 63 of this consolidated record.)

[fol. 1339] COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Nov. 5, 1930

NOTE.—This is the identical Document contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 100 of this consolidated record.)

[fol. 1340] EXCEPTIONS TO FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed Nov. 19, 1930

NOTE.—This is the identical document contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 107 of this consolidated record.)

[fol. 1341] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION FOR ORDER STAYING THE ENFORCEMENT OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION PENDING APPEAL—Filed Nov. 14, 1930

Now comes The Philadelphia Warehousing & Cold Storage, the Petitioner above named, by its Attorney, John P. Connelly, Esq., and respectfully moves the Court to enter an order as part of its Final Decree in this case or contemporaneous with that Final Decree, staying and suspending the order of the Interstate Commerce Commission in the matter of Rex & Company, Inc. at al vs. Reading Company, pending the perfecting and determination of an appeal to the Supreme Court of the United States and for reasons thereof respectfully represents:

1. On October 8, 1930 this Court acting through Judges Thompson and Dickinson, filed an opinion announcing that the bill would be dismissed. Judge Buffington filed a dissenting opinion.

2. Your Petitioner, being advised that it has the right under the statutes to appeal the dismissed of its bill to the [fol. 1342] Supreme Court of the United States, and it proposes to exercise that right promptly after the entry of the Final Decree dismissing the bill.

3. If the order of the Interstate Commerce Commission shall become effective upon the entry of the Decree dismissing the bill and if upon the appeal the Supreme Court of the United States finds that the order of the Commission should be enjoined, then your Petitioner would be irreparably damaged in the following particulars, to wit;

(a) The contract which the Commission has held to be illegal involves the performance of a large amount of services by your Petitioner for which services your Petitioner is entitled under its contract to remuneration and the sum aggregating approximately upwards of $20,000 per annum, and if the order of the Commission goes into effect tem-

porarily and the carriers do not permit the complainant to perform the services in question, your Petitioner will have no adequate remedy at law against the carriers in that it will be unable to prove what services would have been performed if the contract had remained in effect, and how much its profits would be for the rendition of said services.

(b) The order of the Interstate Commerce Commission requires the Defendant, the Reading Company, Defendant to cancel the provisions of its contract with your Petitioner's warehouse as a public freight house and which provides that carload package freight will be loaded or unloaded by the carrier at the stations of your Petitioner. The Defendant and the Commission take the position that in the absence of such contract the payments to your Petitioner for loading and unloading freight at its station would be unlawful. If the said contract is cancelled, this Statutory Court could not compel the Defendant to restore the Con- [fol. 1343] tract nor could the Supreme Court of the United States. The Interstate Commerce Commission could do so, if at all, and only upon the complaint and answer, the hearing of which would consume a considerable period of time. Even if a Court of general equity jurisdiction on a suit by the Petitioner against the Railroad Company specifically to enforce its contract with the Railroad Company providing for the rendition of such services and the payment thereof, could and would compel the Railroad Company to republish its tariffs, the prosecution of such proceeding in equity would involve unwarranted delay and expense. Temporary effectiveness of the Interstate Commerce Commission's order would do irreparable injury to your Petitioner's right under its contract with the Reading Railroad Company.

(c) The merchants of Philadelphia and others who now receive freight at your Petitioner's warehouse or ship freight from its warehouse, would suffer irreparable damage. In some cases there are contracts of purchase or sale entered into on the faith of the undertaking of the carrier to load or unload package car load freight as part of the services rendered under the freight rate and the said contract of purchase or sale at prices which do not contemplate loading or unloading by the shipper or consignee at its own expense. The payment of such loading and unloading costs

would not be recouped by the said merchant either from the purchasers or sellers or from the Railroad Company. In the case of contracts for purchase or sale to be made during the months while this case is pending in the Supreme Court of the United States, the uncertainty as to who will have to bear the costs of loading and unloading will be an upsetting factor, a great disturbance to the market and a detriment to the business of the merchants of Philadelphia.

[fol. 1344] (d) The system of handling package carload freight at Philadelphia enjoined by the Commissioner's order has been in effect here for many years. The channels of business have adapted themselves to that arrangement.

The abolition of the arrangement will be a severe blow to the business of Philadelphia, a fact recognized it is believed in both the majority and minority opinions of this Court. If the order of the Commission is suspended on appeal, the business community of Philadelphia will, as pointed out in the majority opinion, have to adapt itself to the new conditions at whatever cost, but if the order is not sustained on appeal, a great loss will have been sustained by the business community without advantage to anyone and without warrant in law.

(e) The warehouse Complainants before the Commission would be injured by staying the Commissioner's order. In its Opinion the Interstate Commerce Commission refused to award damages to the complainant warehouse on the ground that they had failed to prove damages, but under date of August 23, 1930, they filed a new complaint with the Interstate Commerce Commission, Docket No. 23790 praying for an award of damages to them on account of the alleged violations of the Interstate Commerce Act. The Reading Company, the Respondent therein, is a solvent corporation able to pay damages for all injuries sustained by the complaining warehouses during the period while this appeal is under consideration of the Supreme Court.

(f) The putting the order into effect for a period of months (as contrasted with putting it permanently into effect) would be of no advantage to the complaining warehouses. The Commissioner's order does not require the payment of any sums to them. The competitive advantage

they would gain in their competition with the petitioning warehouses would not be great because there would not be [fol. 1345] time especially in view of the uncertainty as to the ultimate disposition of the case, to advertise, solicit and contract for additional business. The advantages which the complaining warehouses seek will accrue in a greater ability to rent their premises and to make other long time contracts for the handling of freight which advantages could not be gained in a period of months of uncertainty. On the contrary the disadvantages experienced by the entire business community because of the temporary upsetting of a long course of trade, would be reflected in an injury to the business of the complaining warehouses.

Wherefore, your Petitioner prays that the order of the Interstate Commerce Commission be stayed and suspended pending the perfecting and determination of the appeal to the Supreme Court of the United States.

Your Petitioner furthermore prays leave to introduce evidence before this Court tending to show that irreparable damage would be done to your Petitioner if the order of the Interstate Commerce Commission be not stayed pending the appeal to the Supreme Court of the United States.

John P. Connelly, John P. Connelly, Attorney for Petitioner.

[fol. 1346] In United States District Court

In Equity. No. 5791

[Title omitted]

Answer of United States to Petition for Stay of Order of Interstate Commerce Commission Pending Appeal—Filed Nov. 18, 1930

United States, one of the above-named respondents, for answer to the petition filed herein against it for an order from this Court staying the enforcement of the order of the Interstate Commerce Commission pending the petitioner's proposed appeal to the Supreme Court of the United States, says:

I

United States admits the allegations of paragraph numbered 1 of the petition.

II

For answer to paragraph numbered 2 of the petition, United States says that Urgent Deficiencies Act (38 Stat. 219) provides for a direct appeal to the Supreme Court of the United States from a final decree of a specially-constituted District Court in a suit to enjoin, set aside, annual, or suspend an order of the Interstate Commerce Commission; but United States has no knowledge of petitioner's purpose to prosecute an appeal in this case.

[fol. 1347] III

For answer to paragraph numbered 3 of the petition, and the several subdivisions thereof, United States denies that petitioner will suffer irreparable damage or any other legal injury if the order of the Interstate Commerce Commission becomes effective pending an appeal of this case to the Supreme Court of the United States; and for further answer to the said subdivisions, seriatim, of said paragraph numbered 3, United States says:

a. Section 15 (13) of the Interstate Commerce Act provides petitioner a clear, adequate, and complete remedy for collection from the carriers of any compensation to which it may be legally entitled for the performance of any transportation service rendered by petitioner in connection with the interstate transportation of any of its shipments; and United States further says that even assuming, as suggested in said subdivision (a), that the carriers do not permit petitioner to perform any transportation service in connection with its shipments during the period of the appeal to the Supreme Court, no legal injury could result to petitioner for the reason that it will have performed no service for which it may legally be compensated; and United States further says that if the Supreme Court should hold that petitioner is legally entitled to compensation from the carriers for performing the services in question, its right rests not upon the contract but upon the provision of said Section 15 (13) of the Interstate Commerce Act, and the

remedy so provided may be invoked by it regardless of the provisions or the existence of said contracts. Petitioner's private contract rights are not, and can not be made an issue in this suit, nor a ground for granting the stay sought by petitioner.

b. United States denies that the order of the Commission requires cancellation of the contract mentioned in sub- [fol. 1348] division (b), and says that the order does not, as it could not, require that the contract be cancelled, nor does it make any other requirement with respect to said contract; United States further denies that it takes "the position that in the absence of such contract the payments to your Petitioner for loading and unloading freight at its station would be unlawful", and says that the existence of said contract is immaterial to the legality or illegality of such payments; and United States further says that nothing in the Commission's order prevents the carriers from permitting petitioner to perform, or prevents petitioner from performing, the loading and unloading service upon cars consigned to or from its warehouses pending appeal; and if the Supreme Court should hold said service to be those for performance of which petitioner is lawfully entitled to receive compensation, petitioner may compel payment thereof under said Section 15 (13), in the improbable event the carriers refuse to make such payments voluntarily with respect to shipments handled during the appeal as well as those to be handled thereafter.

c. United States denies that "the merchants of Philadelphia and others who now receive freight at your petitioner's warehouse or ship freight from its warehouse, would suffer irreparable damage", unless the Commission's order be stayed pending appeal as alleged in said subdivision (c). Further answering said subdivision, United States says that the Commission's order leaves the carriers free to continue loading and unloading carload shipments for the merchants of Philadelphia and others upon the public team tracks, or delivering tracks of those carriers, and that the order does not prevent the merchants of Philadelphia or others from receiving and accepting said loading and unloading services free of charge from the carriers upon the latter's own tracks; nor does the order prevent the carriers from paying allowances to shippers for

loading and unloading carload shipments on the carriers' public delivery tracks. United States further says that the facts found by the Court show that the allowances, [fol. 1349] characterized by the Court as unlawful rebates, are not paid by the carriers to the merchants of Philadelphia, and that their only possible benefit, if any, therefrom is indirect in that it depends upon whether or not petitioner reduces its warehouse rates to such of said merchants as are its customers, to the extent of the allowances or any part thereof.

d. United States says that the allegations contained in said subdivision (d) are based entirely upon speculation and are not susceptible to proof; and denies that any facts of record support the assumption that the freight rates of all the merchants in Philadelphia will be automatically increased by the amount of the rebates, and says that the facts of record show that the operators of the several non-contract warehouses, who serve a great number of Philadelphia merchants and who perform services identical to those performed by petitioner, and without the aid or benefit of the rebates, charge their customers approximately the same rates as those charged by petitioner. United States further says that the allegations of said subdivision (d) with respect to the alleged disarrangement and disruption of the channels or methods of business established as a result of the payment of the rebates are without foundation in and are contrary to the facts of record in that they assume that to deprive petitioner of the rebates will deprive petitioner's customers of the use of its warehouse trade services, whereas, the facts found by the Commission and by this Court establish that it is because petitioner's warehouses as well as those of the non-contract warehouses render a storage handling and distribution service that the merchants of Philadelphia and those located elsewhere avail themselves of the use of the warehouses, and United States denies that such use and availability of said warehouses will be minimized or affected in any way by enforcement of the Commission's order pending appeal.

[fol. 1350] e. United States denies that the non-contract warehouses who were complainants before the Commission would not be injured by staying the Commission's order

pending appeal; and further denies that it lies with petitioner to prove injury or lack of injury to said non-contract warehouses; and United States further says that even if the allegations of said subdivision (e) be true, the lack of injury to the non-contract warehouses constitutes no legal ground or showing sufficient to entitle petitioner to continue receiving rebates, the acceptance and receipt of which is a criminal offense in violation of the Elkins Act (34 Stat. L. 587, as amended 36 Stat. L. 1167, U. S. C. Tit. 49, Secs. 43, 47).

Further answering the last sentence of said subdivision (e), United States says that if as alleged in said paragraph the Reading Company is a solvent corporation able to pay said non-contract warehouses for all injuries sustained by them if the order be stayed pending appeal, it is equally solvent and able, and can be compelled under Section 15 (13) of the Interstate Commerce Act, to pay petitioner for all transportation services rendered by it during the period of appeal.

f. For answer to said subdivision (f) United States says that the Commission's order does not purport to give the non-contract warehouses any "advantage" over petitioner, but shows on its face that it seeks to end the disadvantage under which those warehouses have labored as a result of the inequality and discriminatory treatment accorded them by the carriers as compared with petitioner; and that said non-contract warehouses obviously will continue to suffer a disadvantage and discrimination each and every day the enforcement of the Commission's order is delayed.

IV

Further answering the petition, United States says that both the Interstate Commerce Commission and this Court have found and concluded from the facts of record that the allowances constitute unlawful rebates; and says further [fol. 1351] that the receipt and acceptance by a shipper of rebates is made a criminal offense by the provisions of the Elkins Act mentioned above, and United States denies petitioner's legal right to continue receiving the rebates or any part thereof. United States further says that inasmuch as it is established beyond question that there is substantial

evidence to support the finding of the Commission and of this Court that the allowances constitute rebates, and that in view of the holding of the Supreme Court in Erie Railroad Company v. United States, 280 U. S. 98, that such finding is conclusive upon the courts when supported by substantial evidence, petitioner's prayer for a stay of the Commission's order pending appeal is nothing more than a request that this Court sanction, concur in, and approve the proposition that to meet the ends of justice and equity it is essential that petitioner be permitted to continue violating a criminal statute.

Wherefore, having fully answered, United States prays that the petition for a stay pending appeal be denied and for the entry of a decree by the Court dissolving the temporary injunction heretofore issued in this case and dismissing the petition.

(S.) Elmer B. Collins, Special Assistant to the Attorney General. John Lord O'Brian, Assistant to the Attorney General. Paul Freeman, Acting United States Attorney.

[fol. 1352] In United States District Court

In Equity. No. 5791

[Title omitted]

Answer of the Intervening Defendants to the Petition of the Philadelphia Warehousing & Cold Storage Company for an Order of this Court Staying the Enforcement of the Order of the Interstate Commerce Commission Pending Appeal—Filed Nov. 19, 1930

Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, and Industrial Cold Storage and Warehouse Company, intervening defendants, for answer to the petition of the Philadelphia Warehousing & Cold Storage Company, say:

I

Answering paragraph 1 of the petition. We admit all that is alleged in paragraph 1.

Answering paragraph 2 of the petition. We deny the allegations in paragraph 2. Our position is that the petitioner has no right of appeal to the Supreme Court of the United States. The petitioner is claiming a right to col- [fol. 1353] lect compensation from the Reading Company under certain contracts or agreements in writing and to use the provisions of the act of June 18, 1909, C. 309, 36 Stat. 539, as amended by Urgent Deficiencies Act of October 22, 1913, C. 32, 38 Stat. 208, 220, to enforce its alleged right. Such a suit on contract cannot be prosecuted under that statute. The railroad company, through refraining from participating in the case at bar, has manifested that it does not desire to pay that compensation. In the absence of the railroad company as a party to this suit the petitioner is without statutory authority to prosecute its alleged appeal further. Sprunt and Sons v. United States, 281 U. S. 249, decided April 14, 1930.

Answering paragraph 3 of the petition. We deny that the application or effect of the commission's order, upon vacation of the temporary stay granted by this court, will result in irreparable injury or any damage to the petitioner.

We submit the following in answer to each of the subdivisions of paragraph 3 of the petition.

Answering sub-paragraph (a). We deny the assertions in the petition that the contracts require the petitioner to perform service for the Reading Company. The petitioner did not offer evidence, at the public hearing before the commission, tending to show that the petitioner undertook to perform any service for the railroad company under the contracts or that the petitioner performed any such service. This court and the commission found that no such service was performed by the petitioner. This court, in its opinion of October 9, 1930, among other things, said:

"But there is substantial evidence to support the facts found by the commission that the warehouses of the plaintiffs are not in fact open public freight stations of the railroads; that the service rendered by them under the con-

[fol. 1354] tracts is a trade service and not a transportation service, in that it was rendered by the contract warehouses and by the interveners, each for its patrons in precisely the same way, that thereby the plaintiffs are enabled to perform such service for their patrons for a lower charge than that for which the interveners can perform the same service to their patrons.

It is clear that the payment of the allowances by the railroads under the contracts was not a consideration for employment in a transportation service."

Answering sub-paragraph (b). We deny the assertions that the petitioner will be subjected to irreparable injury. We submit that if and when the Supreme Court of the United States finds the contracts and allowances to be lawful then the petitioner can, in suit upon its contract, recover the aggregate of the allowances deferred awaiting that finding.

Answering sub-paragraph (c). In this sub-paragraph the petitioner assumes to state the rights of others, not named, in support of relief sought by the petitioner and to establish that the unnamed shippers may be subjected to irreparable injury. Absence of foundation relieves us of the necessity of discussing the allegations in this sub-paragraph. However, if petitioner's assertions are true it necessarily follows that irreparable injury will be inflicted upon the intervening defendants through further stay of the order of the commission which will enable the petitioner to use unlawful allowances and rebates in unfair competition enabling the petitioner to entice business from the intervening defendants.

Answering sub-paragraph (d). The so-called system of handling package carload freight at Philadelphia, that is, the allowance practice is not a general or reputable practice. A few selected warehouse companies receive the allowances and their numerous competitors and the shipping public [fol. 1355] generally, insofar as is evidenced in this case, do not receive such allowances or equivalent reductions of freight rates. The elimination of the unlawful rebating practice, which resulted to the benefit of a chosen few, will not injure the general public.

Answering sub-paragraph (e). The intervening defendants would be subjected to irreparable injury through a

further stay of the order of the commission. Under the Interstate Commerce Act they can claim only compensatory damages. Pennsylvania Railroad v. International Coal Company 230 U. S. 184, 206. The intervening defendants can claim damages only on competitive business which they can obtain by reducing their compensation to the sub-normal basis which the petitioner is enabled, by the allowances, to impose upon all competitive warehouse trade. The intervening defendants cannot claim or recover damages for loss of business in instances where the sub-normal basis makes their solicitation or quotations futile. And they cannot obtain reparation for the entrenched power in business circles gained by the petitioner through taking the benefit of the allowances for many months and years—every additional day of the allowances adding to that power.

Answering sub-paragraph (f). This sub-paragraph of the petition reflects a groundless effort of the petitioner to describe prospective business efforts of the intervening defendants and persons other than the petitioner and the future results thereof. Our answer to sub-paragraph (e) is our answer, and refutation, of sub-paragraph (f).

II

The commission found that the allowances were unlawful rebates. This court concluded that the giving of the allowances in question subjected the intervening defendants to [fol. 1356] unjust discrimination in violation of section 2 of the Interstate Commerce Act. It necessarily follows that continuance of the giving of the allowances will consummate numerous willful violations of section 1 of the Elkins Act, a criminal statute. Every assertion, in the petition, of damage which may result to the petitioner from vacating the order of this court which temporarily stays operation of the commission's order applies with equal force in establishing that irreparable injury will be inflicted upon the intervening defendants through further stay and suspension of that order.

III

Wherefore the intervening defendants, having fully answered the petition, pray that the petition be dismissed for want of equity at the cost of the petitioner and that this

court forthwith enter its decree, in the form heretofore proposed by the United States, vacating and dissolving the temporary orders of this court entered on February 21, 1930, and April 15, 1930.

Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, Terminal Warehouse Company, Industrial Cold Storage & Warehouse Company, Intervening Defendants. By John J. Hickey, John J. Hickey, 800 Southern Building, Washington, D. C.; Theodore Reinel, Theodore Reinel, 108 North 19th Street, Philadelphia, Pa., Solicitors for Intervening Defendants.

[fol. 1357] OPINION OF THE COURT SUR PETITION FOR ORDER OF SUPERSEDEAS—Filed Nov. 19, 1930

NOTE.—This is the identical Opinion contained in record of Merchants Warehouse Company et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 149 of this consolidated record.)

[fol. 1358] FINAL DECREE—Filed Nov. 19, 1930

NOTE.—This is the identical Decree contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See Page 154 of this consolidated record.)

[fol. 1359] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL—Filed Nov. 19, 1930

Petition for Appeal

Considering itself aggrieved by the decision of the United States District Court for the Eastern District of Pennsyl-

vania, the Plaintiff therein, The Philadelphia Warehousing & Cold Storage Company, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order fixing the amount of the bond thereon.

Assignments of Error

And the said Philadelphia Warehousing & Cold Storage Company assigns the following error in the record and proceedings in the said case:

1. The District Court erred in dismissing the bill.

2. The District Court erred in refusing to enjoin the order of the Interstate Commerce Commission entered in the [fol. 1360] case of Rex & Company, Inc. et al. vs. Reading Company.

3. The District Court erred in its Finding of Fact Number 1 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 1. The said Finding is as follows:

* * * * * * *

4. The District Court erred in its Finding of Fact Number 4 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact No. 4. The said Finding of Fact is as follows:

* * * * * * *

[fol. 1361] 5. The District Court erred in its Finding of Fact Number 8 and overruling the plaintiff's exception to the finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 8. The said Finding of Fact is as follows:

* * * * * * *

6. The District Court erred in its Finding of Fact Number 9 and in overruling the plaintiff's exception to that

finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 9. The said Finding of Fact is as follows:

. . . . . .

[fol. 1362] 7. The District Court erred in its Finding of Fact Number 10 in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 10. The said Finding of Fact is as follows:

. . . . . .

8. The District Court erred in its Finding of Fact Number 13 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 13. The said Finding of Fact is as follows:

. . . . . .

9. The District Court erred in its Findings of Fact Number 14, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 14. The said Finding of Fact is as follows:

. . . . . .

10. The District Court erred in its Finding of Fact Num-
[fol. 1363] ber 15 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 15. The said Finding of Fact is as follows.

. . . . . .

11. The District Court erred in its Finding of Fact Number 16, and in overruling the plaintiff's exception to that

finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 16. The said Finding of Fact is as follows:

* * * * * * *

12. The District Court erred in its Finding of Fact Number 17, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 17. The said Finding of Fact is as follows:

* * * * * * *

[fol. 1364] 13. The District Court erred in its Finding of Fact Number 18 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 18. The said Finding of Fact is as follows:

* * * * * * *

14. The District Court erred in its Finding of Fact Number 19 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 19. The said Finding of Fact is as follows:

* * * * * * *

15. The District Court erred in its Finding of Fact Number 20 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 20. The said Finding of Fact is as follows:

* * * * * * *

16. The District Court erred in its Finding of Fact Number 21 and in overruling the plaintiff's exception to that

Finding. The Finding of Fact and the Exception are as [fol. 1365] follows:

The Court erred in Finding of Fact Number 21. The said Finding of Fact is as follows:

. . . . . .

17. The District Court erred in its Finding of Fact Number 26 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 26. The said Finding of Fact is as follows:

. . . . . .

18. The District Court erred in its Finding of Fact Number 27 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 27. The said Finding of Fact is as follows:

. . . . . .

[fol. 1365a] 19. The District Court erred in its Conclusion of Law Number 1, and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 1. The said Conclusion of Law is as follows:

. . . . . .

20. The District Court erred in its Conclusion of Law Number 2, and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 2. The said Conclusion of Law is as follows:

. . . . . .

21. The District Court erred in its Conclusion of Law Number 3 and in overruling the plaintiff's exception to

the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 3. The said Conclusion of Law is as follows:

* * * * * * *

[fol. 1366] 22. The District Court erred in its Conclusion of Law Number 4 and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 4. The said Conclusion of Law is as follows:

* * * * * * *

23. The District Court erred in its Conclusion of Law Number 5 and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 5. The said Conclusion of Law is as follows:

* * * * * * *

Prayer for Reversal

For which errors the Plaintiff, the Philadelphia Warehousing & Cold Storage Company, prays that the said decree of the United States District Court for the Eastern District of Pennsylvania, dated November 19th, 1930, in the above entitled cause, be reversed and a decree rendered in favor of the said Plaintiff enjoining the said order of the Interstate Commerce Commission as therein prayed and for costs.

John P. Connelly, Attorney for Petitioner.

[fols. 1367 & 1368] Citation, in usual form, showing service on Elmer B. Collins et al., filed December 19, 1930, omitted in printing.

[fol. 1369] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

PETITION OF THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, THE PHILADELPHIA BOURSE, THE GROCERS & IMPORTERS EXCHANGE AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC., INTERVENORS IN BEHALF OF THE PLAINTIFF, FOR APPEAL, ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed Dec. 24, 1930

Petition for Appeal

Considering themselves aggrieved by the decision of the United States District Court for the Eastern District of Pennsylvania, the Intervenors therein in behalf of the Plaintiffs, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, the Philadelphia Bourse, the Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. hereby pray that an appeal be allowed to the Supreme Court of the United States herein.

[fols. 1370 & 1371] Assignment of Errors

The said Intervenors in behalf of the Plaintiff the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, the Philadelphia Bourse, the Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. adopt as their own the Assignment of Errors heretofore filed by the Plaintiff.

Prayer for Reversal

For the said errors, the Intervenors in behalf of the Plaintiff, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, the Philadelphia Bourse, the Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc. pray that the said decree of the United States District Court for the Eastern District of Pennsylvania, dated November 19th, 1930, in the above

entitled cause, be reversed and a decree renderd in favor of the said Plaintiffs, enjoining the said order of the Interstate Commerce Commission as therein prayed.

Allen S. Olmsted, 2nd, Attorney for Petitioner.

We hereby assent to the joining of above named as parties appellant without the filing of an additional bond.

Elmer B. Collins, for the Attorney General of the United States. John J. Hickey, for Intervenors in behalf of the Plaintiffs. J. Stanley Payne, for Interstate Commerce Commission.

[fols. 1372-1374] Citation, in usual form, showing service on Elmer B. Collins et al., filed December 26, 1930, omitted in printing.

[fol. 1375] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

ORDER ALLOWING APPEAL—Filed Dec. 24, 1930

The Plaintiff in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a decree made and entered by this Court on the 19th day of November, 1930 and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided, and the said appeal having been allowed upon the filing of a bond in the sum of $2,000 as security for costs, and the said bond having been filed by the said Plaintiff and The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia, Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., Intervenors in behalf of the Plaintiff, having likewise prayed for the allowance of an appeal in

this cause to the Supreme Court of the United States from [fols. 1376 & 1377] a decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided;

It is Now Here Ordered that an appeal to the Supreme Court of the United States from the United States District Court for the Eastern District of Pennsylvania, in this cause, be and the same is hereby allowed to the said The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, The Philadelphia Bourse, The Grocers & Importers Exchange and Association of Manufacturers' Representatives, Inc., Intervenors in behalf of the Plaintiff, and the said Intervenors in behalf of the Plaintiff are hereby joined as parties appellant to the said appeal heretofore allowed to the Plaintiff.

Joseph Buffington, C. J. J. W. Thompson, D. J.
O. B. Dickinson, D. J.

December 23, 1930.

[fols. 1378 & 1379] Bond on appeal for $2,000, approved and filed November 19, 1930, omitted in printing.

[fol. 1380] In United States District Court

In Equity. No. 5791

[Title omitted]

Copy of Notice to Attorney General of Penna.—Filed Jan. 7, 1931

To the Attorney General of Pennsylvania:

Please take notice that The Philadelphia Warehousing and Cold Storage Co. has taken an appeal to the Supreme Court of the United States from the decree of the District Court for the Eastern District of Pennsylvania in the above

entitled cause, dismissing the prayer of the Petitioner. Said prayer was to enjoin the order of the Interstate Commerce Commission in a certain proceeding entitled Rex & Co. Inc., et al., vs. Reading Company, I. C. C. Docket No. 20968—Sub No. 2.

Very truly yours, John P. Connelly, Attorney for Appellants.

[fol. 1381] State of Pennslyvania,
County of Philadelphia, ss:

John P. Connelly, being duly sworn according to law deposes and says that he served the Notice, of which the above is a copy, upon the Attorney General of the State of Pennsylvania, by sending the same by United States mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pa., January 6, 1931.

John P. Connelly, John P. Connelly.

Sworn and subscribed before me this Sixth day of January A. D. 1931. Clifford K. Cassel, Notary Public. My Commission expires Jan. 16, 1931.

[fol. 1382] In United States District Court

In Equity. No. 5791

[Title omitted]

Order Allowing Appeal—Filed Nov. 19, 1930

The Plaintiff in the above entitled suit, having prayed for the allowance of an Appeal in this cause to the Supreme Court of the United States from the Decree made and entered by this Court on the 19th day of November, 1930, and from each and every part thereof, and having presented and filed its Petition for Appeal, Assignment of Error, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided:

It is Now Here Ordered that an Appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the United States District Court for the East-

ern District of Pennsylvania in this cause, as provided by law, and it is further ordered that the clerk of the Court shall prepare and certify a transcript of the record, proceedings and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty days of this date. [fol. 1383] It is Further Ordered that the said Order of the Interstate Commerce Commission in the matter of Rex & Company, Inc. et al. vs. Reading Company, be and it hereby is stayed and suspended pending the determination of this Appeal by the Supreme Court of the United States.

And It Is Furthered Ordered that security for costs on appeal be fixed in the sum of $2,000.00.

J. W. Thompson, D. J. Joseph Buffington, C. J. O. B. Dickinson, D. J.

[fol. 1384] In United States District Court

In Equity. No. 5791

[Title omitted]

Petition for Cross-appeal by United States of America, Interstate Commerce Commission, Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, feeling themselves aggrieved by the following, the third paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, viz:

"It is Further Ordered that the said Order of the Interstate Commerce Commission in the matter of Rex & Company, Inc. et al. vs. the Reading Company, be and it

hereby is, stayed and suspended pending the determination of this appeal by the Supreme Court of the United States."

pray a cross-appeal therefrom to the Supreme Court of the United States.

[fol. 1385] The particulars wherein they consider the foregoing paragraph erroneous are set forth in the assignment of error on file to which reference is hereby made.

They pray that a transcript of the record, pleadings, and papers on which the foregoing quoted order was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

John Lord O'Brian, the Assistant to the Attorney General, for United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

[fol. 1386] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

ASSIGNMENT OF ERROR ON CROSS-APPEAL—Filed Jan. 7, 1931

United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, now come, by their respective counsel, and, in connection with their petition for cross-appeal, file the following assignment of error on which they will rely in their cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, entered November 19, 1930:

The District Court erred in staying and suspending the Commission's order in the matter of Rex & Company, Incorporated, et al. v. Reading Company, pending determination of the appeal by the Supreme Court of the United States.

[fol. 1387] Wherefore respondents and intervening respondents, and each of them, pray that said third paragraph of the order allowing appeal, entered November 19, 1930, be reversed, annulled, and set aside, with directions that the stay and suspension pending appeal shall be forthwith dissolved, and for such other and further orders as may be appropriate.

John Lord O'Brian, the Assistant to the Attorney General, for United States of America. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, and Industrial Cold Storage & Warehouse Company.

[fol. 1388] IN UNITED STATES DISTRICT COURT

In Equity. No. 5791

[Title omitted]

ORDER ALLOWING CROSS-APPEAL—Filed Jan. 7, 1931

In the above-entitled cause, United States of America and Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, having made and filed their petition praying a cross-appeal to the Supreme Court of the United States from the third paragraph of the order of the District Court allowing appeal, made and entered November 19, 1930, and having also made and filed an assignment of error, and having in all respects conformed to the statute and rules of court in such case made and provided:

It is ordered and decreed that the cross-appeal be, and the same is hereby, allowed as prayed and made returnable within thirty (30) days from the date hereof, and the [fol. 1389] Clerk is directed to transmit forthwith a properly authenticated transcript of the record, proceedings, and papers on which said stay order was made and entered to the Supreme Court of the United States.

J. W. Thompson, J.

Jan. 7, 1931.

[fols. 1390 & 1391] Citation, in usual form, showing service on John P. Connelly and Allen Olmsted, 2d, filed January 7, 1931, omitted in printing.

[fol. 1392] In United States District Court

In Equity. No. 5791

[Title omitted]

Copy of Notice of Cross-appeal to the Attorney General of the State of Pennsylvania—Filed Jan. 7, 1931

To the Honorable the Attorney General of the State of Pennsylvania, Harrisburg, Pa.:

Your are hereby notified that the United States of America and the Interstate Commerce Commission, respondents, and Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, intervening respondents, in the above-entitled case, have taken a cross-appeal to the Supreme Court of the United States from the order of the District Court made and entered November 19, 1930, which stayed and suspended the order of the Interstate Commerce Commission in the proceeding entitled Rex & Company, Incorporated, et al. v. Reading Company, Docket No. 20968, Sub. No. 2, made and entered December 28, 1929, pending determination of the appeal by the Supreme Court of the United States.

[fol. 1393] This notice is given to you pursuant to the provisions of the Urgent Deficiencies Act of October 22, 1913, (ch. 32, 38 Stat. 208, 220, 221, U. S. C. Title 28, Sec. 47).

John Lord O'Brian, Assistant to the Attorney General, for the United States of America. J. Stanley Payne, Daniel W. Knowlton, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Incorporated, James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company.

STATE OF PENNSYLVANIA,
County of Philadelphia, ss:

J. Stanley Payne being duly sworn according to law deposes and says that he is Solicitor for the Interstate Commerce Commission and that on behalf of United States of America, the Interstate Commerce Commission, Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage & Warehouse Company, he served Notice of Cross Appeal, of which the above is a copy, upon the Attorney General of the State of Pennsylvania, by sending the same by United States Mail addressed to the Attorney General of Pennsylvania, Harrisburg, Pennsylvania, on January 7, 1931.

(S.) J. Stanley Payne.

Sworn to and subscribed before me this 7th day of January, 1931. (S.) Clifford K. Cassel, Notary Public. (Seal.)

[fol. 1394] ORDERS EXTENDING TIME FOR DOCKETING CASE ON APPEAL—Filed Dec. 17, 1930, and Dec. 30, 1930

NOTE.—These are the identical Orders contained in record of Merchants Warehouse Company et al. v. United States et al., and are here incorporated by reference thereto. (See page- 193-195 of this consolidated record.)

[fol. 1395] STIPULATION IN RE STATEMENT OF EVIDENCE—Filed Jan. 7, 1931

NOTE.—This is the identical Stipulation contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See page 671 of this consolidated record.)

[fol. 1396] ORDER APPROVING STATEMENT OF EVIDENCE—Filed Jan. 7, 1931

NOTE.—This is the identical Order contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See page 674 of this consolidated record.)

[fol. 1397] PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 7, 1931

NOTE.—This is the identical Præcipe contained in record of Merchants Warehouse Company, et al. v. United States, et al., and is here incorporated by reference thereto. (See page 1154 of this consolidated record.)

[fol. 1398] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 1399] IN UNITED STATES DISTRICT COURT

December Term, 1929

No. 5781

December Term, 1929

No. 5789

December Term, 1929

No. 5791.

[Titles omitted]

ORDER EXTENDING TIME FOR DOCKETING CASE—Filed Dec. 17, 1930

For good cause appearing and upon consent of counsel for all parties the time for docketing the above case and fil-

ing the record thereof with the Clerk of the U. S. Supreme Court is hereby extended to and including December 31, 1930.

Joseph Buffington, Circuit Judge. J. W. Thompson, District Judge. O. B. Dickinson, District Judge.

[File endorsement omitted.]

[fols. 1400-1400b] Consenting to:

M. Hampton Todd, Attorney for Merchants Warehouse Company, Appellant. H. Edgar Barnes, Attorney for the Pennsylvania Warehousing & Safe Deposit Company, Appellant. John P. Connelly, Attorney for the Philadelphia Warehousing & Cold Storage Company, Appellant. Allen S. Olmsted, 2nd, Attorney for Commercial Exchange of Philadelphia et al., Appellants. Elmer B. Collins, Special Assistant to the Attorney General, for the United States, Appellee. J. Stanley Payne, Attorney for Interstate Commerce Commission, Appellee. John J. Hickey, Attorney for intervening defendants, Appellees.

[fol. 1401] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

In Equity. No. 5781

In Equity. No. 5789

In Equity. No. 5791

[Titles omitted]

ORDER EXTENDING TIME—Filed Dec. 30, 1930

For good cause and upon the stipulation of counsel for all parties, the time for docketing the above cases and filing the records thereof with the Clerk of the Supreme [fols. 1402 & 1402-a] Court of the United States is hereby enlarged to and including January 10, 1931.

Joseph Buffington, Circuit Judge. J. W. Thompson, District Judge. O. B. Dickinson, District Judge. J. Stanley Payne, Counsel for Interstate Commerce Commission. Allen S. Olmsted, 2nd, Counsel for Merchants Warehouse Company.

[fol. 1403] IN SUPREME COURT OF THE UNITED STATES

October Term, 1930

No. 635

October Term, 1930

No. 636

October Term, 1930

No. 638

October Term, 1930

No. 639

October Term, 1930

No. 641

October Term, 1930

No. 642

STATEMENT OF POINTS INTENDED TO BE RELIED UPON AND STIPULATION OF PARTS OF RECORD TO BE PRINTED—Filed Jan. 24, 1931

Come now Merchants Warehouse Company, The Pennsylvania Warehousing & Safe Deposit Company, The Philadelphia Warehousing & Cold Storage Company, The Com-
[fol. 1404] mercial Exchange of Philadelphia, Philadelphia Board of Trade, Grocers' and Importers' Exchange, Philadelphia Bourse, and Association of Manufacturers' Representatives, Inc., Appellants in the above entitled cases and state that the points upon which they intend to rely in this court in these cases are as follows:

1. The contracts between the railroad companies and the contract warehouse companies under which the warehouse companies agree to load and unload freight and perform certain other services for a money consideration therein designated, contravenes no provision of the Interstate Commerce Act.

2. The performance of the said contracts by the parties thereto contravenes no provision of the Interstate Commerce Act.

3. The contract warehouses are not, in fact, the consignees, the consignors or the owners of the freight, for the loading and unloading of which they are compensated by the carriers, and are not to be deemed such in law.

4. The contract warehouses are public freight stations of the carriers at which they have formally held themselves out as willing to receive and deliver freight.

5. The contract warehouses are used by the public as public freight stations.

6. The railroad companies, having in their published tariffs undertaken to load and unload freight at the contract warehouses, have a legal duty to do so, and likewise a right to compensate those who perform that duty for them.

7. The service of loading and unloading freight at the contract warehouses is a transportation service within the meaning of Section 1 (3) of the Interstate Commerce Act [fol. 1405] (U. S. Code, Title 49, Chap. 1, paragraph 3).

8. The relation between the carriers and the contract warehouse companies is that of principal and agent. The relationship is not subject to regulation by the Interstate Commerce Commission.

9. The Commission's order requires the carriers to cease to undertake to load and unload freight at the contract warehouses. The Commission has no jurisdiction to prohibit carriers from rendering transportation service, which they are willing to render.

10. The Commission's order requires the carriers to cease to designate the contract warehouse as public freight stations. The Commission has no jurisdiction to compel the carriers to abandon facilities for the receipt and delivery of freight, which they are willing to maintain.

11. The Commisison has no jurisdiction to order the carriers to cease to pay their agents for services rendered by them.

12. The contract warehouses are served by tracks owned and operated by the carriers, not by private sidings.

13. The deduction of the Interstate Commerce Commission from the undisputed evidence

"that the contract warehouses are compensated for the "solicitation of freight for movement over the lines of the "respective defendants through the payment of the allow-"ances in question; that traffic considerations have been "the primary motive for the payment of these allowances; "that the facilities of the contract warehouses, while nomi-"nally open to the general public as railroad freight sta-"tions are not in fact public stations but are confined to the "handling of merchandise for the patrons of the ware-"houses; and that the services performed by the contract [fol. 1406] "warehouses in connection with the loading and "unloading of freight, including the sending of arrival "notices, the collection of freight charges and other inci-"dental matters are in fact performed for the benefit of "the owner of the merchandise rather than for defendants"

were unwarranted and without any legal justification.

14. That the finding by the Interstate Commerce Commission

"that the practice of defendants in making allowances to "the contract warehouses in connection with the loading or "unloading of package freight at Philadelphia as aforesaid, "and refusing to make similar allowances to complainants "for performing similar services results in unjust discrimi-"nation, in undue preference of the contract warehouses, "and in undue prejudice to complainants,"

is not justified by the evidence in the case, is contrary to law, and does not, in law, warrant the Commission's order.

15. That the finding by the Interstate Commerce Commission

"that these allowances are nothing more than a device "to attempt to lend legality to the payment of rebates to "the contract warehouses"

is not justified by the evidence in the case and is contrary to law.

16. The fundamental facts being undisputed the deductions drawn from them by the Commission are not binding on the Court as findings of fact except only as such findings are reasonable and well founded.

17. The District Court's findings of fact and conclusions of law excepted to and assigned as error, are not sustained by substantial evidence and are not warranted in law.

18. The District Court erred in dismissing the bill and in refusing to enjoin the order of the Commission.

And the Appellants further state that the parts of the [fols. 1407 & 1407a] record, as filed in this Court, which need be printed by the Clerk for hearing of the cases are the parts set out in a stipulation of counsel for all parties, filed herein.

M. Hampton Todd, H. Edgar Barnes, John P. Connelly, Allen S. Olmsted, 2nd, Counsel for Appellants.

Service of the above statement is hereby accepted Jan. 24, 1931.

Elmer B. Collins, Special Assistant to Attorney General of the United States, for the United States, Appellee. Daniel W. Knowlton, J. Stanley Payne, Solicitors for the Interstate Commerce Commission, Appellee. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage and Warehouse Company.

[fol. 1408] IN SUPREME COURT OF THE UNITED STATES

[fol. 1409] STIPULATION AS TO PRINTING RECORD AND EXHIBITS

It is stipulated by and between the parties hereto that of the record in the District Court and of the record and

exhibits submitted to the Interstate Commerce Commission in the proceedings entitled James Gallagher et al. v. Pennsylvania Railroad Company, Docket Number 20968, Walter A. Bailey et al. v. Baltimore and Ohio Railroad Company, Docket Number 20968, sub number 1, and Rex & Company, Inc., et al., v. Reading Company, Docket number 20968, sub number 2, which have been transmitted to the Clerk of this Court as part of the record on appeal in the above-entitled cause, only the exhibits or portions of exhibits designated below shall be printed as part of the transcript of the record, and the others shall be omitted from printing.

[fol. 1410] Proceedings Before the District Court

Omit the following:

1. Appendix to Petitions (being the opinion and order of the Commission which is printed under the proceedings before the Interstate Commerce Commission) (pps. 20-34- 598-612, 695-725.)

2. So much of the Exceptions to the Findings of Fact and Conclusions of Law as is merely a quotation from the said Findings of Fact and Conclusions of Law which latter are elsewhere printed in the record. (102-107.)

3. So much of the Assignment of Errors as is a mere repetition of the Findings of Fact and Conclusions of Law and Exceptions thereto. (148-155, 642-649, 769-776.)

Record Before the Commission Other Than Exhibits

Omit the following:

1. Petition of Merchants Warehouse Company to Interstate Commerce Commission for postponement of the effective date of its order.

2. Petition of Commercial Exchange of Philadelphia to the Commission for postponement of the effective date of the order.

3. Petitions of Pennsylvania Warehousing & Safe Deposit Company (three in number) to the Commission for postponement of the effective date of the order.

[fol. 1411] Exhibits Before the Commission

The following exhibits are to be printed in full:

Exhibit No.	Exhibit No.	Exhibit No.
4	33	48
5	34	50
6	35	51
7	36	52
10	37	53
11	37a	54
12	37b	55
13	37c	56
19	37d	57
20	37e	59
21	37f	60
22	38	61
23	38a	62
24	38b	63
25	38c	64
26	39	82
27	42	83
28	43	85
29	44	86
30	45	87
31	46	88
32	47	98
		99

The following exhibits are to be printed in part only:

Exhibit No.

1—Omit parts as indicated in red pencil on originals.

14—Print all except picture.

100—Print only cover page and pages 2, 3, 8, 14, 15, 21, 26, 37 and 39.

101—Print only cover page and pages 2, 5, 6, 8, 14, 17, 18 and 19.

With the above exceptions the entire record now on file shall be printed in the customary manner.

Of the exhibits so omitted from printing, counsel for appellants shall, before the cause comes up for argument in the Supreme Court, furnish to the clerk 20 copies of the following exhibits which shall be suitably bound for submission to the Justices of the Court, to wit: Exhibits 2, 3,

8, 15, 16, 17, 18, 41, 49, 58, 80, 81, 84, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 102.

[fols. 1412 & 1412-a] It is further stipulated and agreed that counsel for any of the parties may in his brief or argument refer to any exhibit or portion thereof introduced in evidence before the Commission that is not printed or not included in the list of those of which 20 copies shall be provided for the use of the Justices, to wit: Exhibits Nos. 9, 40, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78 and 79, by copying in his brief the part thereof which he considers pertinent.

It is further agreed that this stipulation be printed by the clerk as part of the record on appeal.

M. Hampton Todd, Solicitor for Merchants Warehouse Company. Allen S. Olmsted, 2nd, Solicitor for Commercial Exchange of Philadelphia et al. H. Edgar Barnes, Solicitor for Pennsylvania Warehousing & Safe Deposit Company. John P. Connelly, Solicitor for Philadelphia Warehousing & Cold Storage Company. Elmer B. Collins, Special Assistant to Attorney General of the United States, for the United States, Appellee. Daniel W. Knowlton, J. Stanley Payne, Solicitors for the Interstate Commerce Commission, Appellee. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex and Company, Inc., James Gallagher, Northeastern Warehouse Company and Industrial Cold Storage and Warehouse Company.

[fol. 1412-b] [File endorsement omitted.]

[fol. 1413] IN SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1930

No. 637, No. 640, No. 643

Cross-appeals from the District Court of the United States for the Eastern District of Pennsylvania.

STATEMENT OF POINTS ON WHICH UNITED STATES, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., CROSS-APPELLANTS, INTEND TO RELY—Filed Jan. 24, 1931.

In support of their cross-appeals, the United States, the Interstate Commerce Commission, Walter A. Bailey, et al., [fol. 1414] will rely upon the following points:

I. The specially-constituted District Court erred in staying and suspending the order of the Interstate Commerce Commission entered December 28, 1929, in the matter of Walter A. Bailey and Terminal Warehouse Company v. Baltimore & Ohio Railroad Company; Rex & Company, Incorporated, et al. v. The Reading Company; and James Gallagher, et al. v. Pennsylvania Railroad Company, pending determination of the appeals by this Court.

(a) Since the railroad companies which commit the unlawful discrimination, prejudice, and preference were not parties to the suit below, no bond was or could have been required to indemnify damages suffered by the warehouses against which discrimination is practiced while the appeals are under consideration by this Court.

(b) Having found and held that the allowances are unlawful rebates, payment of which results in unjust discrimination, prejudice, and preference, the Court below, in granting the stay order, permits the continuation of the practice, pending determination of the appeals, adjudged by it to be unlawful, and by the Elkins Act (34 Stat. L. 584, U. S. C. Tit. 49, § 41) made a criminal offense against the public.

Only the written opinion, the findings of fact of the Court below sustaining the validity of the Commission's order, and the Court's order staying and suspending the

order of the Commission pending determination of the appeals by this Court and its per curiam opinion "Sur petition for order of supersedeas", will be necessary in the consideration of the point raised by the cross-appeals. The entire record, however, is being printed by the several [fol. 1415] appellants in connection with their respective appeals.

Thomas D. Thacher, Solicitor General. John Lord O'Brian, Assistant to the Attorney General. Elmer B. Collins, Special Assistant to the Attorney General. Daniel W. Knowlton, J. Stanley Payne, Solicitors for Interstate Commerce Commission. John J. Hickey, Solicitor for Walter A. Bailey, Terminal Warehouse Company, Rex & Company, Inc., James Gallagher, Northeastern Warehouse Company, Industrial Cold Storage & Warehouse Company.

Service of the foregoing statement of points, and receipt of a copy thereof are hereby admitted and acknowledged Jan. 24, 1931.

M. Hampton Todd, Solicitor for Merchants Warehouse Company et al. H. Edgar Barnes, Solicitor for the Pennsylvania Warehousing & Safe Deposit Company et al. John P. Connelly, Solicitor for the Philadelphia Warehousing & Cold Storage Company et al. Allen S. Olmsted, 2nd, Solicitor for the Commercial Exchange of Philadelphia, Grocers & Importers Exchange of Philadelphia, et al.

[fol. 1416] [File endorsement omitted.]

Endorsed on cover: File Nos. 35,557, 35,558, 35,559, 35,560, 35,561, 35,562, 35,563, 35,564, 35,565. E. Pennsylvania D. C. U. S. Term No. 635. Merchants Warehouse Company, appellant, vs. The United States of America, Interstate Commerce Commission and James Gallagher, et al. Term No. 636. Merchants Warehouse Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Tradeet al., appellants, vs. The United States of America, Interstate Commerce Commission and James Gallagher,

et al. Term No. 637. The United States of America, Interstate Commerce Commission and Walter A. Bailey, et al., appellants, vs. Merchants Warehouse Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia. Term No. 638. The Pennsylvania Warehousing and Safe Deposit Company, appellant, vs. The United States of America, Interstate Commerce Commission and Walter A. Bailey, et al. Term No. 639. The Pennsylvania Warehousing & Safe Deposit Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants, vs. The United States of America, Interstate Commerce Commission and Walter A. Bailey, et al. Term No. 640. The United States of America, Interstate Commerce Commission, Walter A. Bailey, et al., appellants, vs. The Pennsylvania Warehousing & Safe Deposit Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia. Term No. 641. The Philadelphia Warehousing & Cold Storage Company, appellant, vs. The United States of America, Interstate Commerce Commission and Rex & Company, Inc., et al. Term No. 642. Philadelphia Warehousing & Cold Storage Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants, vs. The United States of America, Interstate Commerce Commission and Rex & Company, Inc., et al. Term No. 643. The United States of America, Interstate Commerce Commission and Walter A. Bailey, et al., appellants, vs. The Philadelphia Warehousing & Cold Storage Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia. Filed January 9, 1931. File Nos. 35,557, 35,558, 35,559, 35,560, 35,561, 35,562, 35,563, 35,564, 35,565.

FILE COPY

Nos. 635, 636, 637, 638, 639, 640, 641, 642, and 643

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CHARLES ELMORE CR

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In the Supreme Court of the United States

OCTOBER TERM, 1930

MERCHANTS WAREHOUSE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL., Appellants, v. MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., Appellants, v. THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' EXCHANGE OF PHILADELPHIA

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and REX & COMPANY, INC., ET AL.

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., Appellants, v. THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO ADVANCE

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, et al.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, et al.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al., appellants

v.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

88610—31

No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the COMMERCIAL EXCHANGE OF PHILADELPHIA, BOARD OF TRADE, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, et al., appellants

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' EXCHANGE OF PHILADELPHIA

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Rex & Company, Inc., et al.

No. 642

PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Rex & Company, Inc., et al.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, and Walter A. Bailey, et al., appellants

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MOTION TO ADVANCE

The United States, Interstate Commerce Commission, Walter A. Bailey, James Gallagher, et al., appellees and cross appellants, by their respective counsel, move that the above-entitled cases be advanced and set for an early hearing.

The suits were brought to enjoin and annul an order of the Interstate Commerce Commission issued December 28, 1929, in proceedings entitled *James Gallagher et al.* v. *Pennsylvania Railroad Company et al.*, 160 I. C. C. 563. The order directed the three railroad companies named therein to cease and abstain from publishing or making allowances to the Merchants Warehouse Company and Quaker City Cold Storage Company, Pennsylvania Warehousing & Safe Deposit Company, and Philadelphia Warehousing & Cold Storage Company in connection with the loading or unloading of carload package freight at Philadelphia, Pa., the Commission having found in its report that the allowances were unlawful rebates, payment of which resulted in unjust discrimination and undue prejudice to other warehouses in Philadelphia which performed similar services but which received no such allowances from the railroads. The court below found (R. 95) that the allowances were unlawful rebates, and in its written opinion

(*Merchants Warehouse Company* v. *United States et al.*, 44 F. (2d) 379, R. 58) sustained the Commission's finding that payment of the allowances resulted in unjust discrimination and undue prejudice, held that the order was valid in all respects, and entered its decree dismissing the petitions for injunction. From the decree the appeals were prosecuted and docketed in this Court on January 9, 1931. (Nos. 635, 636, 638, 639, 641, 642.) In its orders allowing the appeals the court below stayed and suspended enforcement of the Commission's order pending determination of the appeals by this Court. From the "stay orders" the cross appeals (Nos. 637, 640, and 643) were prosecuted and docketed January 9, 1931, in this Court.

The appeals involve the question whether the court below erred in sustaining the validity of the Commission's order and in entering its decree accordingly, dismissing the petitions for injunction. The question involved in the cross appeals is whether, after finding as a fact that the allowances were unlawful rebates, payment of which it held resulted in unjust discrimination and undue prejudice in violation of Sections 2 and 3, respectively, of the Interstate Commerce Act, and holding that the order was valid in all respects, the District Court erred in staying and suspending enforcement of the order pending determination of the appeals by this Court.

In support of the motion to advance, the appellees and cross appellants respectfully show that:

I. The questions involved in these cases are of public importance and their early determination by this Court is desirable in the enforcement and administration of the pertinent provisions of the Interstate Commerce Act.

II. The Commerce Court Act, c. 309; 36 Stat. 539, as amended and incorporated in Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 219 (U. S. C. Title, 28, Sec. 41 to 48), provides that appeals to this Court in cases involving orders of the Interstate Commerce Commission "shall have priority in hearing and determination over all other causes except criminal causes in that court."

III. Both the Commission and the court below have found and held that the allowances are unlawful rebates, payment of which results in undue preference of appellants and in unjust discrimination and undue prejudice against the other warehouse companies in Philadelphia (the parties who complained originally to the Commission) which perform similar services but receive no such allowances. By Section 1 of the Elkins Act, c. 708, 32 Stat. 847; c. 3591, 34 Stat. 584 (U. S. C. Title 49, Secs. 41 and 43) both the payment or receipt of rebates and the commission of discriminations are made criminal offenses, and Section 3 of that Act expressly empowers the several District Courts summarily, and "without the formal pleadings and proceedings applicable to ordinary suits in equity,"

to prevent and to require discontinuance of "any discriminations forbidden by law," through "proper orders, writs, and process," which "may be enforceable as well against the parties interested in the traffic as against the carrier, *subject to the right of appeal as now provided by law.*" The "stay orders" squarely oppose the policy and purpose of that Act in dealing with rebates and discriminations, for, manifestly, the legislative intent is to stop discriminations immediately and to deprive the guilty parties of the unlawful benefits and advantages thereof during the period required for determination of their appeals from the injunction of the District Court, whereas the "stay orders" in this case permit appellants to continue receiving the rebates and the benefits of the discrimination pending determination of the appeals.

IV. Since the Elkins Act makes it a crime to grant or receive rebates or discriminations, the "stay orders" permit the railroads and appellants to continue committing that offense against the public pending determination of the appeals.

V. The "stay orders" were improvidently granted under this Court's decision in *Virginian Railway Co.* v. *United States*, 272 U. S. 658, and deprive the warehouse companies which suffer the undue prejudice and unjust discrimination while the appeals are pending, of the benefits of the Commission's order, adjudged by the court below to be lawful in all respects; thus, in the event the judg-

ment is affirmed on the appeals, resulting in permanent disadvantage and injury to those warehouse companies.

VI. No bond was required by the court to indemnify the warehouse companies suffering the discrimination pending determination of the appeals, and since the railroad companies found guilty of paying the rebates and committing the discriminations were not parties to the suits, apparently to require such bond was not practicable; nor could a bond even if required, indemnify the public for the offense against it pending determination of the appeals.

The appellees and cross appellants consider that, under the circumstances, an early hearing of the cases should be had. In this connection it should be stated that the Clerk advises that it will take about a month to print the record.

Opposing counsel have been notified of this motion.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

JOHN LORD O'BRIAN,
Assistant to the Attorney General.

J. STANLEY PAYNE,
Assistant Chief Counsel,
Interstate Commerce Commission.

JOHN J. HICKEY,
Solicitor for Walter A. Bailey,
James Gallagher, et al.

FEBRUARY, 1931.

U. S. GOVERNMENT PRINTING OFFICE

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CHARLES ELMORE CRO
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Nos. 635, 636, 637, 638, 639, 640, 641, 642, and 643.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

MERCHANTS WAREHOUSE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER ET AL.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and JAMES GALLAGHER, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL., Appellants, v. MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., Appellants, v. THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' AND IMPORTERS' EXCHANGE OF PHILADELPHIA

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, Appellant, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and REX & COMPANY, INC., ET AL.

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, v. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., Appellants, v. THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MOTION TO REASSIGN THE DATE OF ARGUMENT.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and James Gallagher, et al.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and James Gallagher, et al.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Walter A. Bailey, et al., appellants

v.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia, et al.

No. 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT Company, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, and Walter A. Bailey, et al.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT Company, the Commercial Exchange of Philadelphia, Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, and Walter A. Bailey, et al.

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Walter A. Bailey, et al., appellants

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT Company, the Commercial Exchange of Philadelphia, Grocers' and Importers' Exchange of Philadelphia, et al.

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, and Rex & Company, Inc., et al.

No. 642

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, and Rex & Company, Inc., et al.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, and Walter A. Bailey, et al., appellants

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia, et al.

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

MOTION TO REASSIGN THE DATE OF ARGUMENT.

Merchants Warehouse Company, The Pennsylvania Warehousing and Safe Deposit Company, The Philadelphia Warehousing and Cold Storage Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Grocers' and Importers' Exchange of Philadelphia, and Association of Manufacturers Representatives, Incorporated, appellants and cross appellees, by their respective counsel respectfully move the Court to reassign the argument herein for April 21, 1931, and in support thereof respectfully represent:

1. The cases (which are to be argued together on a single record) were, upon motion of appellees and cross appellants, advanced by this court, on February 24, 1931, for argument on April 13, 1931.

2. The printing of the Record has not yet been completed. We are informed by the clerk of this court that he expects delivery of the Record on March 23, 1931, *i. e.*, three weeks before the assigned date of the argument.

3. There is not time adequately to prepare the briefs on the appeals and cross appeals before April 13. At least one week additional is desired.

4. It is expected that the argument for appellants will be presented by Mr. John W. Davis, who has been but recently retained in this litigation. It is requested that the cases be set for Tuesday, April 21, instead of on Monday in accordance with the Court's

usual practice, because of another engagement of Mr. Davis, on Monday, April 20, contracted before his retention in this case.

5. We have notified opposing counsel of our intention of making this motion and they have authorized us to state that they do not oppose it, provided that the case be not assigned for argument later than April 21.

Respectfully submitted,

M. HAMPTON TODD,
JOHN P. CONNELLY,
H. EDGAR BARNES,
ALLEN S. OLMSTED, 2ND,
Solicitors for appellants and cross appellees.

March 16, 1931.

FEB 7 1931
CHARLES ELMORE CROP
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

MERCHANTS WAREHOUSE COMPANY, Appellant, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND JAMES GALLAGHER, ET AL.	No. 635. October Term, 1930.
MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND JAMES GALLAGHER, ET AL.	No. 636. October Term, 1930.
THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, Appellant, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL.	No. 638. October Term, 1930.
THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL.	No. 639. October Term, 1930.
THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, Appellant, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND REX & COMPANY, INC., ET AL.	No. 641. October Term, 1930.
PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., Appellants, vs. THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND REX & COMPANY, INC., ET AL.	No. 642. October Term, 1930.

Appeals from the District Court of the United States for the Eastern District of Pennsylvania.

STATEMENT OF JURISDICTION.

IN THE

Supreme Court of the United States

MERCHANTS WAREHOUSE COMPANY, *Appellant*,	:	No. 635.
vs.	:	
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and JAMES GALLAGHER, ET AL.	:	October Term, 1930.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL, *Appellants*,	:	No. 636.
vs.	:	
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and JAMES GALLAGHER, ET AL.	:	October Term, 1930.

THE PENNSYLVANIA WAREHOUSE AND SAFE DEPOSIT COMPANY, *Appellant*,	:	No. 638.
vs.	:	
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and WALTER A. BAILEY, ET AL.	:	October Term, 1930.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., *Appellants*, *vs.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and WALTER A. BAILEY, ET AL.	No. 639. October Term, 1930.
THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, *Appellant*, *vs.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and REX & COMPANY, INC., ET AL.	No. 641. October Term, 1930.
PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., *Appellants*, *vs.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and REX & COMPANY, INC., ET AL.	No. 642. October Term, 1930.

Appeals From The District Court of The United States For the Eastern District of Pennsylvania.

STATEMENT OF JURISDICTION.

In compliance with Rule 12 of this Court, the appellants submit herewith their statement showing the basis of this Court's jurisdiction:

A.

STATUTES.

This Court has jurisdiction of these appeals under the following statutes:

Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, paragraph (4) (U. S. C. Title 28, Sec. 345).

Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220 (U. S. C. Title 28, Secs. 45a and 47).

B.

DATE OF DECREE AND APPLICATION FOR APPEAL.

The final decree (R. 145)[1] sustaining the order of the Interstate Commerce Commission was entered November 19, 1930. The applications for the appeals in numbers 635,

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[1]All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of this Court. The record has not yet been printed.

638 and 641 were presented the same day, to wit, November 19, 1930. (R. 147, 642, 768) The applications for appeals in numbers 636, 639 and 642 were presented December 23, 1930, (R. 158, 652, 783).

C.

NATURE OF THE CASE.

The suits were brought below to enjoin and annul an order of the Interstate Commerce Commission issued December 28, 1929, in proceedings entitled "No. 20968, *James Gallagher, et al.* v. *Pennsylvania Railroad*", which also embraced No. 20968, Sub-No. 1. *Walter A. Bailey, et al.* v. *Baltimore & Ohio Railroad Company;* and No. 20968, Sub-No. 2. *Rex & Company, Inc., et al.* v. *Reading Company* 160 I. C. C. 563.

The case concerned the loading and unloading of package freight, and other services, rendered at certain warehouses in Philadelphia, to wit, those of the Merchants Warehouse Company, (Appellant in No. 635), Pennsylvania Warehousing & Safe Deposit Company (Appellant in No. 638) and Philadelphia Warehousing & Cold Storage Company (Appellant in No. 641). The Commercial Exchange of Philadelphia and four other associations of merchants (Appellants in Nos. 636, 639, and 642) intervened before the Commission and in the District Court. The order required the railroad companies named therein to cancel their tariff provisions which make the warehouses of the appellants a part of the railroad companies' station facilities at Philadelphia, and required them to cease and desist from publishing or making allowances to those warehouse companies in connection with the loading and unloading of package freight (Proceedings before the Commission, page 53-54). The Commission had found in its report (ibid. p. 52) that the allowances were rebates,

payment of which resulted in unjust discrimination and undue prejudice.

The specially constituted District Court filed its findings of fact (R. 95) and its written opinion (R. 58) holding that the order was valid in all respects and dismissed the petitions for injunction.

D.

CASES SUSTAINING JURISDICTION.

The following cases are believed to sustain the jurisdiction of this Court:

Beaumont, Sour Lake & Western Railway Company vs. United States, 282 U. S. 74.

United States v. Village of Hubbard, 266 U. S. 474.

The Chicago Junction Case, 264, U. S. 258.

Skinner & Eddy Corporation v. United States, 249 U. S. 557.

Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42.

Respectfully submitted,

M. Hampton Todd,
John P. Connelly,
H. Edgar Barnes,
Allen S. Olmsted, 2nd,
Solicitors for Appellants.

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Nos. 637, 640, and 643

In the Supreme Court of the United States

OCTOBER TERM, 1930

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., CROSS-APPELLANTS,

v.

MERCHANTS WAREHOUSE COMPANY ET AL.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., CROSS-APPELLANTS,

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY ET AL.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., CROSS-APPELLANTS,

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY ET AL.

Cross-Appeals from the District Court of the United States for the Eastern District of Pennsylvania

STATEMENT OF JURISDICTION

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 637

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Walter A. Bailey, et al., Cross-Appellants,

v.

MERCHANTS WAREHOUSE COMPANY, ET AL.

No. 640

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Walter A. Bailey, et al., Cross-Appellants,

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT Company, et al.

No. 643

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Walter A. Bailey, et al., Cross-Appellants,

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, et al.

Cross-Appeals From The District Court Of The United States For The Eastern District Of Pennsylvania

35059—31

STATEMENT OF JURISDICTION

In compliance with Rule 12 of this Court, the cross-appellants submit herewith their statement showing the basis of this Court's jurisdiction:

A

STATUTES

Section 238 of the Judicial Code as amended by the Act of February 13, 1925, c. 229, 43 Stat. 936, 938, paragraph (4). (U. S. C. Title 28, Sec. 345.)

Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219, 220. (U. S. C. Title 28, Sec. 47.)

B

DATE OF DECREE AND APPLICATION FOR APPEAL

The final decree (R. 145)[1] sustaining the order of the Interstate Commerce Commission was entered November 19, 1930. The orders allowing the appeals, which also incorporate the stay orders (R. 162, 168, 174, 656, 661, 667, 783, 789, 795), were entered November 19, 1930, and December 24, 1930. The applications for the cross-appeals were filed and the orders allowing them (R. 168, 667, 795), were entered January 7, 1931. The cross-appeals were docketed in this Court January 9, 1931.

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[1] All references to the record are to the pages of the certified unprinted record prepared by the Clerk of the District Court and on file with the Clerk of this Court. The record has not yet been printed.

C

NATURE OF THE CASE

Suits were brought below to enjoin and annul an order of the Interstate Commerce Commission issued December 28, 1929, in proceedings entitled "No. 20968, *James Gallagher et al.* v. *Pennsylvania Railroad Company,*" which also embraced No. 20968, Sub-No. 1, *Walter A. Bailey et al.* v. *Baltimore & Ohio Railroad Company,* and No. 20968, Sub-No. 2, *Rex & Company, Inc. et al.* v. *Reading Company,* 160 I. C. C. 563. The order directed the three railroad companies named therein to cease, desist, and abstain from publishing or making allowances to the Merchants Warehouse Company and Quaker City Cold Storage Company, Pennsylvania Warehousing & Safe Deposit Company, and Philadelphia Warehousing and Cold Storage Company, respectively, in connection with the loading or unloading of carload package freight at Philadelphia, Pennsylvania, the Commission having found in its report that the allowances were rebates, payment of which resulted in unjust discrimination and undue prejudice.

The specially-constituted District Court filed its findings of fact (R. 95) and its written opinion holding that the order was valid in all respects and dismissed the petitions for injunction.

Upon the petitioners' applications, that court granted and issued, as parts of its orders allowing

the appeals, orders staying and suspending the Commission's order pending determination of the appeals by this Court. From the "stay orders" the cross-appeals were prosecuted.

D

CASES SUSTAINING JURISDICTION

Beaumont, Sour Lake & Western Ry. Co. v. *United States*, 282 U. S. 74.

Virginian Railway Co. v. *United States*, 272 U. S. 658.

St. Louis & O'Fallon Ry. Co. v. *United States*, 279 U. S. 461.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
Assistant to the Attorney General.
ELMER B. COLLINS,
Special Assistant to the Attorney General.
DANIEL W. KNOWLTON,
J. STANLEY PAYNE,
Solicitors for Interstate Commerce Commission.
JOHN J. HICKEY,
Solicitor for Walter A. Bailey, et al.

JANUARY, 1931.

U. S. GOVERNMENT PRINTING OFFICE: 1931

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IN THE

Supreme Court of the United States

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CHARLES ELMORE

No. 635. October Term, 1930.

MERCHANTS' WAREHOUSE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and JAMES GALLAGHER, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief for Appellant

M. HAMPTON TODD,
ALLEN S. OLMSTED, 2nd,
Counsel for Appellant.

[illegible] & Lyle, [illegible] Penfield Bldg., Phila., Pa.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 635. October Term, 1930.

MERCHANTS' WAREHOUSE COMPANY,
Appellant,

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION and JAMES GALLAGHER, *et al.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLANT.

OPINIONS IN COURT BELOW.

The opinion and dissenting opinion are reported in 44 Fed. (2d) 380-392 and also will be found in the Record, pages 30-58.

JURISDICTION.

Paragraph 1 of Rule 12 has been complied with.

STATEMENT OF THE CASE.

This is an appeal by the Merchants' Warehouse Company from a decree of the District Court of the United States for the Eastern District of Pennsylvania, dismissing its bill in equity which prayed for an injunction to restrain the enforcement of a cease and desist order of the Interstate Commerce Commission of the United States issued on the complaint of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey and the Terminal Warehouse Company wherein they averred that certain contracts between the Pennsylvania Railroad Company and the appellant for loading and unloading merchandise to and from freight cars were unjustly discriminatory to the complainants and were a device to pay rebates to the appellant as a shipper of the merchandise loaded and unloaded by it into and from freight cars of said carrier. A copy of said complaint will be found in the printed Record, page 112.

The nine contracts between the appellant and the Pennsylvania Railroad Company are in connection with the operation of ten warehouses situate in the City of Philadelphia in different localities convenient for the receipt and delivery of package freight. They are printed in the Record, pages 455 to 526. They are of various dates and are substantially similar in their provisions.

One thereof, dated the 25th, January, 1917 (Record, page 455), runs for the period of twenty years from its date and had for its object the handling and storage of flour, grain and other merchandise in the warehouses situate on the plot of ground bounded by Delaware Avenue, Walnut Street, Water and Chestnut Streets in the City of Philadelphia. The said agreement substantially provides that the Pennsylvania Railroad Company would:

First: (a) Maintain railroad tracks adjacent to the warehouses, do the necessary shifting for the purpose of tak-

ing and delivering all freight cars to be shipped therefrom or destined thereto.

(b) "To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouses the amounts following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and during the first two years of the life of this agreement, forty cents (40¢) per ton (of 2,000 pounds) for each ton of merchandise, and during the following years that the agreement is in force, thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company."

(c) While this contract is in force the railroad will not make any allowance to any other person or corporation for terminal services in connection with loading and unloading of merchandise to or from the warehouses located in the City of Philadelphia.

Second: The warehouse company agreed:

(a) At all times to accord to traffic passing over the railroad company's system, preference in the facilities furnished by the warehouse over traffic passing over other lines.

(b) "To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees and in the case of incoming freight to promptly notify the consignees of the arrival thereof."

(c) To be responsible to the railroad company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the warehouse company to the railroad company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the railroad company may from time to time elect to collect direct from any consignee; the warehouse company to give bond to the railroad company to secure the performance of the contract.

(d) To indemnify the railroad company for all damage to or loss of freights and to keep adequate and sufficient fire insurance.

(e) To promptly notify the railroad company of the failure of any consignee to remove freight.

(f) To indemnify the railroad company against liability on account of acts or omissions of the warehouse company.

(g) To keep the warehouse properly equipped to handle traffic promptly.

Third: It was mutually agreed that freight not removed within the free time should be treated as stored with the warehouse company for account of the owners thereof.

Fourth: That no assignment of the agreement should be valid without the consent of the railroad company.

Fifth: That the agreement should remain in effect from the first of February, 1917, for twenty years.

Sixth: If the terms of the agreement should be found to work onerously it shall be subject to revision at the end of any period of two years and if the parties cannot agree upon such revision, it shall be submitted to arbitration.

The tariffs filed by the Pennsylvania Railroad in connection with the contracts, among other things provide (Record, pages 708, 697, 696):

Under consolidated freight classification No. 5, Rule 27, it is provided as follows:

> "Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers and to unload from cars freight received by rail carriers carried at carload ratings."

To this Rule 27, exceptions are established, as follows:

> "At Philadelphia, Pennsylvania, package freight carried at carload rates will be loaded or unloaded by the carriers at the stations in Philadelphia specified below except when handled direct to or from cars on team tracks at owner's request,"——

Exceptions are also made at other points. The tariff provided [G. O. I. C. C. #14322 Supplement No. 6 effective May 10th, 1926]:

> "Rule 32. Warehouses considered freight stations during free time.
>
> "In the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. #1491, P. S. C. —Pa. #86, Agent's Index #54 supplements thereto or re-issues thereof the following warehouses in Philadelphia, Pa., are considered freight stations during the free time,"

This is followed by a list of the several warehouses covered by the contracts above mentioned.

A large amount of testimony was taken before the Examiner of the Interstate Commerce Commission which is printed in the Record.

The Interstate Commerce Commission filed its report, a copy of which will be found (Record, page 143). In this report, Porter, Commissioner, says, at page 150:

> "Following McCormick Warehouse Co. v. Pennsylvania R. Co., *supra*, and upon this record, we find that

the practice of defendants in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as afore said, *and refusing to make similar allowances to complainants for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses.* It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will therefore be required to cease and desist from publishing or making such discriminatory and preferential allowances. The Pennsylvania and the Baltimore & Ohio will also be required to cancel their tariff provisions which make the facilities of the contract warehouses a part of the respective station facilities of these defendants at Philadelphia." (Italics ours.)

The Interstate Commence Commission on December 28th, 1929, issued its cease and desist order effective February 10th, 1930 (Record, page 151), afterwards made effective February 25th, 1930 (Record, page 176), whereupon the appellant filed its bill in equity in the District Court of the United States for the Eastern District of Pennsylvania against the United States of America and the Interstate Commerce Commission, wherein it prayed among other things that the Court should summon a Statutory Court in accordance with the provisions of the Act of Congress, approved October 22, 1913, 38 Statutes 220. U. S. Code Title 28, Section 47, and that the execution of said cease and desist order be stayed until the further order of the Court (Record, page 4).

On the presentation of said bill in equity to the Hon. J. Whitaker Thompson, Judge in said court he made an order dated February 17th, 1930, that United States Circuit Judge Victor B. Woolley, and United States District Judge Oliver B. Dickinson be called to his assistance

to hear and determine said application for a temporary stay and ordered the hearing thereof before said Court on 21st day of February, 1930, at 10:00 o'clock at Philadelphia (Record, page 15).

On February 21st, 1930, the Court made an order staying the execution of the said cease and desist order and fixing March 26th, 1930, for hearing on the merits (Record, page 18). On March 26th, 1930, decree filed amending decree of February 17th, 1930, by substituting the Honorable Joseph Buffington, Circuit Judge, in place of the Honorable Victor B. Woolley (Record, page 28). The said cause was heard by the said Court on March 26th, 27th and 28th, 1930. At the hearing the principal trade bodies of Philadelphia intervened in behalf of plaintiffs and the complaining warehouses intervened in behalf of defendants.

On April 15th, 1930, decree filed continuing temporary stay of order of Interstate Commerce Commission (Record, page 29). On October 8th, 1930, the Court dismissed appellant's bill in equity in an opinion by Thompson, J., concurred in by Dickinson, J. (Record, page 30), Buffington, C. J., dissenting (Record, page 43). On appellant's petition for appeal with supersedeas, the Court in a *per curiam* filed November 19th, 1930, granted such order fixing appeal bond in the sum of $2,000 which bond was entered and approved (Record, page 92). The said appeal is now pending for hearing in this court.

ASSIGNMENTS OF ERROR.

1. The District Court erred in dismissing the bill.

2. The District Court erred in refusing to enjoin the order of the Interstate Commerce Commission entered in the case of James Gallagher, Northeastern Warehouse Company, Walter A. Bailey, and Terminal Warehouse Company v. Pennsylvania Railroad Company.

3. The District Court erred in its Finding of Fact Number 1 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 1, the said Finding is as follows:

> "1. The plaintiff warehouses and the complainants before the Commission, who are intervening defendants in this proceeding, operate at Philadelphia warehouses, at and from which they ship and receive, load, unload, store, distribute, and deliver in small quantities carload lots of merchandise, known as 'package freight,' carried or to be carried at carload rates, which they have previously solicited for such handling from their customers located generally in cities outside of Pennsylvania. For those services they collect from their customers certain warehouse rates and charges."

4. The District Court erred in its Finding of Fact Number 4 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 4, the said Finding of Fact is as follows:

> "4. The carriers, The Pennsylvania Railroad Company, the Baltimore and Ohio Railroad Company, and the Reading Company, pay to the plaintiffs, in connection with the loading, unloading, and 'handling' by them of such merchandise, certain sums, ranging from 30¢ to 50¢ per ton, but make no such payments to the warehouses which were complainants before the Commission. No payments are made if the shipments are unloaded within the forty-eight hours free time. The Pennsylvania Railroad Company pays the allowances in question to the Merchants Warehouse Company and the Quaker City Cold Storage Company, the Baltimore

and Ohio to the Pennsylvania Warehousing and Safe Deposit Company, and the Reading Company to the Philadelphia Warehousing and Cold Storage Company, the plaintiffs here. Payments are also made by the Reading to the Pennsylvania Warehousing and Safe Deposit Company."

5. The District Court erred in its Finding of Fact Number 8 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 8. The said Finding of Fact is as follows:

"8. The contract warehouses and the intervening warehouses are engaged in the same kind of business, and each ships and receives at its warehouse package freight of all kinds destined to or shipped from various points in the United States over the railroads, and the circumstances and conditions surrounding handling and movement of the traffic are similar if not identical."

6. The District Court erred in its Finding of Fact Number 9 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 9. The said Finding of Fact is as follows:

"9. The services which the contract warehouses perform, for which the contracts provide for the payment of compensation by the carrier to them are performed, for their patrons, by the intervening defendants who were complainants before the Commission; the latter load and unload the freight for their patrons, pay and collect freight charges, send notices of arrival to their customers, check the contents of the cars, give the railroads reports, notify the railroads of damage

to the freight, prepare bills of lading, mark and stencil packages, recooper and perform in general identical services for their patrons."

7. The District Court erred in its Finding of Fact Number 10 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 10. The said Finding of Fact is as follows:

"10. The warehouses of the plaintiffs and those of the intervenors are served by private side tracks or sidings connecting with the line of one or more defendants."

8. The District Court erred in its Finding of Fact Number 13 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 13. The said Finding of Fact is as follows:

"13. Concerns using public warehouse facilities generally select the company offering them the lowest aggregate charge for the distribution of their goods. By means of the allowances the contract warehouses are able to quote lower charges than can the intervenors."

9. The District Court erred in its Finding of Fact Number 14, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 14. The said Finding of Fact is as follows:

"14. The contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question."

10. The District Court erred in its Finding of Fact Number 15 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 15. The said Finding of Fact is as follows:

"15. Traffic considerations have been the primary motive for the payment of these allowances."

11. The District Court erred in its Finding of Fact Number 16, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 16. The said Finding of Fact is as follows:

"16. The facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact open public stations, but are confined to the handling of merchandise for the patrons of the warehouses."

12. The District Court erred in its Finding of Fact Number 17, and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 17. The said Finding of Fact is as follows:

"17. The services performed by the contract warehouses in connection with the loading and unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact, performed for the benefit of the owner of the merchandise rather than for the railroads."

13. The District Court erred in its Finding of Fact Number 18 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 18. The said Finding of Fact is as follows:

"18. The service rendered by the warehouses under the contracts is a trade service and not a transportation service."

14. The District Court erred in its Finding of Fact Number 19 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 19. The said Finding of Fact is as follows:

"19. While the contract warehouses are not the owners of the goods received or shipped by them, all of the dealings are with these warehouse companies, and none with the owners of the goods."

15. The District Court erred in its Finding of Fact Number 20 and in overruling the plaintiff's exception to that finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 20. The said Finding of Fact is as follows:

"20. As to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots."

16. The District Court erred in its Finding of Fact Number 21 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 21. The said Finding of Fact is as follows:

"21. The contract warehouses, even though not the owners of the goods, have been given the dominion over such goods for transportation purposes, and ac-

cordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to the intervening warehouses, shipments from and to their warehouses being handled in substantially the same manner."

17. The District Court erred in its Finding of Fact Number 26 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 26. The said Finding of Fact is as follows:

"26. The practice of plaintiffs in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid and refusing to make similar allowances to intervenors for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants."

18. The District Court erred in its Finding of Fact Number 27 and in overruling the plaintiff's exception to that Finding. The Finding of Fact and the Exception are as follows:

The Court erred in Finding of Fact Number 27. The said Finding of Fact is as follows:

"27. These contracts for the payment of the allowances are devices to attempt to lend legality to the payment of rebates to the contract warehouses."

19. The District Court erred in its Conclusion of Law Number 1, and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 1. The said Conclusion of Law is as follows:

"1. The payment of the allowances by the railroads.

in accordance with the contracts, is unlawful in that it subjects the intervening warehouses to unjust discrimination as against the contract warehouses."

20. The District Court erred in its Conclusion of Law Number 2, and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 2. The said Conclusion of Law is as follows:

"2. The payment of the said allowances gives an undue and unreasonable preference and advantage to the contract warehouses and subjects the intervening warehouses to an undue and unreasonable prejudice and disadvantage."

21. The District Court erred in its Conclusion of Law Number 3 and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 3. The said Conclusion of Law is as follows:

"3. The allowances paid to the contract warehouses are unlawful as rebates."

22. The District Court erred in its Conclusion of Law Number 4 and in overruling the plaintiff's exception to the Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 4. The said Conclusion of Law is as follows:

"4. The order of the Interstate Commerce Commission of September 28, 1929, is in all respects a lawful order."

23. The District Court erred in its Conclusion of Law Number 5 and in overruling the plaintiff's exception to that Conclusion. The Conclusion of Law and the Exception are as follows:

The Court erred in Conclusion of Law Number 5. The said Conclusion of Law is as follows:

"5. The petitions should be dismissed."

QUESTIONS INVOLVED.

First: Are the contracts between the Pennsylvania Railroad Company and the Merchants' Warehouse Company for loading and unloading freight cars discriminatory and inhibited as such under the provisions of the Interstate Commerce Act?

Second: Does the loading and unloading of freight cars by the Merchants' Warehouse Company under its contracts with the Pennsylvania Railroad Company give it such dominion over the merchandise loaded or unloaded as to constitute it a shipper of such merchandise within the meaning of the Interstate Commerce Act?

Third: Does the payment by the Pennsylvania Railroad Company to the Merchants' Warehouse Company of the agreed compensation for the services rendered by it in performing its obligations under the contracts aforesaid, constitute a rebate within the meaning of the Interstate Commerce Act?

Fourth: Are the services rendered by the Merchants' Warehouse Company under the terms of said contracts a transportation service within the meaning of the Interstate Commerce Act?

ARGUMENT.

The appellant's main proposition in this case is that the contracts in question require it to load and unload freight cars for the Railroad Company and to receive in payment for such transportation services the sums stipulated; that such contracts are legal obligations which are not discriminatory or prejudicial to the complaining warehouses within the meaning of the Interstate Commerce Act. In short the Railroad Company had a right to hire whomever it saw fit to render such services and because it did not hire the complaining warehouses to render similar services did not make the contracts in question illegal, notwithstanding the finding to that effect by the Interstate Commerce Commission.

There is no question of fact involved in this case. The fundamental facts are undisputed but the inferences to be drawn from these are radically different; as an example, the Commission finds (Record, page 148):

> "The contract warehouses, even though not the owners of the goods, have been *given dominion over such goods* for transportation purposes, and accordingly for transportation purposes *they should be deemed* the consignors of shipments from or consignees of shipments to their warehouses." (Italics ours.)

It is manifest on its face this is a deduction from the undisputed fact that the freight cars were placed in the custody of the warehouse company for the purpose of having freight loaded therein or unloaded therefrom. The use of the expression "given dominion over such goods" is also a deduction from the undisputed fact that the warehouse company was in possession of the goods for the purpose of performing the agreed services. In this connection it may be noted that the carrier had a like dominion over

the goods for the purposes of transportation and that this dominion was passed on to its agent for the purpose of unloading the freight cars. The carrier could have unloaded the cars with men on its own payrolls hired for the purpose, but it saw fit to hire the warehouse company to do it for them.

A finding based on inferences from uncontroverted facts has not the weight in an appellate court of a finding of fact.

Bianchi v. Vere, 17 Fed. 2d. 22.

On appeal in equity, appellate court is not bound by the trial Judge's finding of fact.

Wolf v. Minerals, 18 Fed. 2d. 483.

> "When the fact is merely a deduction from other facts reported by him (Master) his conclusion is simply a result of reasoning of which the Court is as competent to judge as he."
>
> *Phillips's Appeal,* 68 Pa. 130.

In *Hamilton v. Fay,* 283 Pa. 175 (1925), Mr. Justice Walling at page 179 cites *Phillips's Appeal* and kindred cases with approval.

In the *Tap Line Cases,* 234 U. S. 1, Mr. Justice Day says at page 22:

> "It is further insisted upon the authority of Proctor & Gamble Co. v. United States, 225 U. S. 282, and other cases in this court which have followed that decision, that in the present cases the decision rests upon conclusions of the Commission as to matters of fact only, which are within the sole jurisdiction of that body and not reviewable in the courts. But we shall consider the case upon the findings of fact preceding this opinion, which are identical with those made by the Commission, and test the conclusions reached as matters of law, giving proper consideration to matters of fact which are not in dispute."

On this subject Circuit Judge Buffington in his dissenting opinion says (Record, page 51):

> "Indeed, the holding of the Commission can hardly be deemed a finding of fact, for it only is:
>
> 'The contract warehouses even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses.'
>
> "Being merely a deduction, this Court is at liberty to draw its own deductions and base its decree on its own view * * *"

He further says (Record, page 53):

> "Yet it is upon this false assumption of the warehouse being the consignee that this entire proceeding is bottomed. The Commission saw that the fact that the warehouse was the consignee was a prerequisite to their order and that unless such was the fact, the order here involved could not be sustained."

We submit, therefore, that the conclusions of the Commission in this case, and the like conclusions in the majority opinion of Judge Thompson in the Court below are not binding on this Court, being as they are in every instance, inferences or deductions from undisputed facts. They can only be sustained if they are well-founded in law. Whether they are or not will hereafter be further discussed.

There is no evidence in this record that impugns the good faith of either party to the contracts in question either in their procurement before execution or thereafter in their performance. If these contracts are illegal it is because the making of such contracts are prohibited by the provisions of the Interstate Commerce Act, and not because of anything done or omitted to be done in their performance. The adjudication of the Commission fully sustains this view.

THE FIRST QUESTION INVOLVED IN THIS RECORD IS:

Are the contracts between the Pennsylvania Railroad Company and the Merchants' Warehouse Company for loading and unloading freight cars discriminatory and inhibited as such under the provisions of the Interstate Commerce Act?

The language of Section 3 which will be found in U. S. Code, Title 49, Sec. 3, Subsection 1, at page 1654, is as follows:

> "It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or any particular description of traffic in any respect whatsoever or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

The complaining warehouses in their petition to the Interstate Commerce Commission in paragraph VII averred (Record, page 116):

> "That by reason of the facts stated in the foregoing paragraphs complainants have been subjected to the payment of rates and charges for transportation which were, when exacted, and still are unjustly discriminatory in violation of Section 2 of said Act, and unduly preferential of said subsidized warehouse companies, competitors of complainants, and unduly prejudicial to complainants in violation of Section 3 of said Act. That each of the complainants has been injured thereby to his or its damage in a large sum of money."

Mr. Commissioner Porter in his adjudication (Record, page 150), finds:

> "* * * we find that the practice of defendants in mak-

ing allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid, *and refusing to make similar allowances to complainants for performing similar services results* in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants." (Italics ours.)

Because the carrier hired the Merchants' Warehouse Company to load and unload package freight at Philadelphia and did not hire the complainants to do so, it was guilty of unjust discrimination and granted an undue preference to it.

We submit there is nothing in the statute that deprives the carrier of the right to hire whomsoever it sees fit to render it a service. Undoubtedly when it hires one man and does not hire another it discriminates against the man it did not hire but that is not the kind of discrimination and preference which is forbidden by the statute. The language of the statute in dealing with the subject necessarily must be drawn in broad terms but we do not think it was the intention of Congress to deprive the carrier of the right to say whom it should or should not employ to render it service. If the carrier would allot an undue proportion of coal cars to one mining plant and refuse to make a similar allotment to another it would be unjust discrimination and undue preference. Instances might be multiplied, but it is unnecessary to do so.

The question of what is unjust discrimination has been considered and defined by this Court in *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42. This is a leading case on the subject and is generally known as the *Peavey case*. In that case Peavey & Company were paid by the Union Pacific Railroad Company certain amounts for the elevation of grain at its elevators at which points the railroad company designated, under its tariff, that it would assume the cost of elevation. Complaint was made by other elevators who were not paid for like services, that this arrangement created unjust discrimination against them.

Mr. Justice Holmes says, at page 45:

> "Thus Congress clearly recognized that services such as those rendered by Peavey & Co. were services in transportation and were to be paid for *notwithstanding the possibility that some advantage might be gained as a result.*" (Italics ours.)

The opinion further says, at page 46:

> "The law does not attempt to equalize fortune, opportunities or abilities. On the contrary the Act of Congress in terms contemplates that if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them."

The pending case is even stronger than the *Peavey case* because Peavey was paid for elevating his own grain. The Merchants' Warehouse Company had no ownership in the merchandise it loaded or unloaded from the freight cars.

We submit that a carrier has full liberty to select its own agents to perform transportation services on its behalf which it is under legal obligation to perform and that it may employ its own agent exclusively and refuse to employ another.

Express Cases, 117 U. S. 1;
Chicago &c., R. R. v. Pullman Southern Car Co., 139 U. S. 79;
Covington Stock Yards v. Keith, 139 U. S. 128;
Donovan v. Pennsylvania Company, 199 U. S. 279.

In the *Donovan* case, Mr. Justice Harlan, at page 293, said:

> "It by no means follows, however, that the company may not establish such reasonable rules, in respect of the use of its property, as the public convenience and its interests may suggest, provided only that such rules are consistent with the ends for which the corporation was created and not inconsistent with public regulations legally established for the conduct of its business. Although its functions are public in their nature, the

company holds the legal title to the property which it has undertaken to employ in the discharge of those functions. And as incident to ownership it may use the property for the purposes of making profit for itself; such use, however, being always subject to the condition that the property must be devoted primarily to public objects, without discrimination among passengers and shippers, and not be so managed as to defeat these objects. It is required, under all circumstances, to do what may be reasonably necessary and suitable for the accommodation of passengers and shippers. But it is under no obligation to refrain from using its property to the best advantage of the public and of itself. It is not bound to so use its property that others, having no business with it, may make profit to themselves. Its property is to be deemed, in every legal sense, private property as between it and those of the general public who have no occasion to use it for purposes of transportation."

Again, at page 296, Mr. Justice Harlan said:

"Here the defendants press the suggestion that they are entitled to the same rights as were accorded by special arrangement to the Parmelee Transfer Company. They insist, in effect, that as carriers of passengers they are entitled to transact their business at any place which, under the authority of law, is devoted primarily to public uses—certainly at any place open to another carrier engaged in the same kind of business. But this contention, when applied to the present case, cannot be sustained. The railroad company was not bound to accord this particular privilege to the defendants simply because it had accorded a like privilege to the Parmelee Transfer Company; for it had no contractual relations with the defendants, and owed them as hackmen no duty to aid them in their special calling. The defendants did not have or profess to have any business of their own with the company. In meeting their obligations to the public, whatever the nature of those obligations, the defendants could use any property owned by them, but they could not, of right, use the property of others against their consent."

In *Great Northern Railway Company v. Minnesota*, 238 U. S. 340, Mr. Justice McReynolds, at page 346, said;

> "A railroad's possessions are subject to its public duty, but beyond this and within charter limits, like other owners of private property, it may control its own affairs."

THE SECOND QUESTION INVOLVED IN THIS RECORD IS:

Does the loading and unloading of freight cars by the Merchants' Warehouse Company under its contracts with the Pennsylvania Railroad Company give it such dominion over the merchandise loaded or unloaded as to constitute it a shipper of such merchandise within the meaning of the Interstate Commerce Commission?

Mr. Commissioner Porter in his adjudication finds (Record, page 148):

> "While the contract warehouses *are not the owners* of the goods received or shipped by them, all of defendants' dealings are with these companies and none with the owners of the goods. As to many of the inbound carload shipments the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they *should be deemed the consignors of shipments* from or consignees of shipments to their warehouses. The same is true as to complainants, shipments from and to their warehouses being handled in substantially the same manner." (Italics ours.)

The adjudication shows on its face that the warehouse company was not the owner of the merchandise loaded or

unloaded from the freight cars. It is undisputed that the bills of lading for inbound freight were issued by a named consignor to a named consignee in care of the Merchants' Warehouse Company at one of the ten warehouses which would be most convenient for unloading the cars for the purpose of making delivery to the consignees (Record, page 337; Exhibit 80, Bound Volume of Exhibits filed under Stipulation of Counsel; see also Stipulation of Counsel, Record, page 233; see also Record, page 379).

The contract required the carrier to maintain railroad tracks adjacent to the warehouses and do the necessary shifting in delivering cars to the warehouse or taking them therefrom. Upon a loaded car being placed on the railroad track alongside of the warehouse platform, the employees of the Merchants' Warehouse Company then make a careful note of the condition of the seals of the car and keep a copy of the record, and the seals were broken, the car doors opened, and an unloading crew and checker took the goods out of the car package by package, keeping a careful record of the condition of each package as it is taken out of the car, and then the packages are loaded on "a small buggy or truck," and the freight was transferred to some convenient place in the warehouse, and held subject to the order of the consignee subject to unpaid freight charges. A report was made to the Pennsylvania Railroad Company as to the condition of the contents of the car and the consignee named in the billing was notified that the shipment was ready for delivery. The contents of the car were then held by the warehouse company under its contracts with the railroad company, subject to the order of the consignee for forty-eight hours free time, and were insured by the warehouse company. If the consignee did not take delivery within forty-eight hours, the contents of the car were stored in the warehouse subject to the order of the consignee, who thereafter paid to the warehouse company its proper charges for storage. If the consignee took delivery within forty-eight hours, the warehouse company delivered the contents of the car on its platform to the tailboards of

the trucks sent by the consignee or to parties to whom the consignee gave a written order for delivery. After the expiration of the forty-eight hours, the contents of the car remained on storage in the warehouse for the owner thereof, and were thereafter delivered upon his order. (See Record, pages 375 to 377.)

As an illustration of what is meant by the phrase "given dominion over such goods for transportation purposes," let us assume that a package of ketchup consigned from outside the State for delivery in Philadelphia to a named consignee in care of the Merchants' Warehouse Company, is unloaded by the Merchants' Warehouse; in the process of unloading it is negligently handled and the contents damaged. The owner of the goods thereupon presents a claim to the Pennsylvania Railroad Company for his loss and damage. The Pennsylvania Railroad Company could not defend on the ground that the goods had been delivered to the consignee and that they had been damaged by the agent of the consignee. It would be responsible for the loss and would undoubtedly pay it. Thereafter it could collect from the Merchants' Warehouse Company the amount of the damage under its contract with the Merchants' Warehouse Company to indemnify it for damage to the goods under clause (d) of its contract to indemnify the railroad company for damage to freight caused by it. No doubt it could similarly sue an employee on its own staff for negligence in performing his duty. The point we wish to emphasize is that the Merchants' Warehouse Company has "been given dominion over the goods for transportation purposes" by the Pennsylvania Railroad which has in no wise diminished its responsibility to the owner of the freight or lost its dominion over the freight so far as the owner thereof is concerned.

The testimony shows that what the contracts required to be done, was done, no more, no less. The cars were loaded and unloaded in the same way and manner as they would have been loaded and unloaded by the regular staff of the carrier's employees at other freight stations.

If we understand the Commissioner's view correctly, it is that because the carrier puts the car loaded with freight in possession of the warehouse company to be unloaded, it is thereby given a "dominion" over the contents of the car which transmutes it into a consignee of the merchandise. In this connection it is to be observed that in every bill of lading involved in this case a real consignee was named. The loaded car was shipped to this named consignee, in care of the Merchants' Warehouse Company at a designated warehouse.

Webster's Collegiate Dictionary defines a consignee as "one to whom something is consigned or shipped." Corpus Juris under the name of consignee says:

> "that person or corporation to whom a carrier may lawfully make delivery of consigned goods in accordance with its contract of carriage."

We submit the Commissioner uses the word "consignee" in the sense that the warehouse company was to be construed as the owner of the merchandise upon which freight rates had been paid and that to pay it for unloading cars was to give a rebate from the rate. We will discuss this under the third question involved. The Commissioner has not stated his view any too clearly but we think we have correctly stated his view.

It is further to be observed that the "dominion" arising from the possession of the loaded cars is the same dominion which the carrier had over them. Under the terms of the contracts the carrier's "dominion" is to remain in full force and effect until the free time has expired and the freight rate paid. This would be the same situation if the carrier had unloaded the cars into its warehouse by its own staff of employees.

We think the warehouse company is the carrier's agent to make delivery of the merchandise to the real consignee in fulfilment of its contract of carriage. This is the reasonable construction of the contracts in question. To call the warehouse company under such circumstances a consignee or consignor is an unreasonable and unjustifiable construc-

tion of the contracts and of the undisputed evidence as to the manner of performing the same.

The contracts required the warehouse company to load cars with outbound freight stored in their warehouses or brought to their warehouses for such purpose. From January 1st, 1928, to September 30th, 1928, at the various warehouses 744 cars of outbound freight were received from trucks or teams (Record, page 452). If the merchandise on storage was to be reshipped it certainly could be more conveniently handled by the warehouse company than by the carrier. There is no policy of law that forbids the carrier from hiring the warehouse company to load the outbound cars in lieu of sending their regular staff to do so. The Commissioner finds that the "dominion" given the warehouse company over the merchandise for the purpose of loading it into freight cars constituted it a consignor of such merchandise. He could, with equal accuracy, have held that the dominion given to the carrier to load the cars by its regular staff constituted it a consignor. Miscalling names does not alter facts.

Buffington, Circuit Judge, in his dissenting opinion said (Record, page 50):

> "We here take occasion to say that there is no proof whatever that in any case any of these contract warehouses was the actual consignee of the inbound carload freight delivered by them or the outbound lots shipped by them. The few isolated instances where they received pay for handling their own shipments were evidently oversights and were in violation of the railroad's ordered tariff provision that 'no payment will be made on any traffic consigned to or by the warehouse company.' So far as outbound freight was concerned, the proof is they simply received the freight from the shipper and shipped it as was done by the railroad freight agent at any of its other freight stations. In doing so they performed no service for the shipper and they did not make the use of their warehousing facilities a condition precedent to the shipper using the station. So far as inbound carload freights were concerned, the shipper, in order to advise the railroad

as to its particular destination, marked the car in care of such or such a contract warehouse. Far from designating or making the warehouse the consignee of his freight or authorizing the warehouse to receive the goods on his behalf and thereby discharge the railroad from liability, the shipper did nothing of the sort. On the contrary, the shipper retained his bill of lading and with the consequent right of stopping in transit, in no way surrendered or in any way qualified his ownership of his property and in fact did nothing by marking it in care of the warehouse, other than simply to show that the warehouse which the railroad by its contract made one of its freight stations was the particular railroad freight station to which he wished his goods to be forwarded. In point of fact, the sending it in care of the warehouse amounted to nothing more than if a shipper marked his freight 'in care of John Doe, Pennsylvania, freight agent at Bryn Mawr, Pennsylvania.' To our view, the finding of the Commission that this marking made the warehouse the consignee of the freight had not only no proof to support it and is not a finding of fact, but is a mere conclusion or inference for drawing which there was no warrant or foundation. And, to our view, the upholding of this theory of imaginary consigneeship of the freight would deprive consignors of freight of one of the most valuable rights a shipper has in surrendering the custody of his freight to a public carrier, namely, constituting the carrier as his agent—with the consequent right of transit stoppage, until the carrier has terminated such agency by delivering such goods to the consignee designated by the consignor. Moreover, to so hold is to ignore the fact that the consignor has named the consignee and has mentioned the warehouse not as the consignee but as one in whose care the shipment is made. The bill of lading must be construed as a whole and every part given effect, and to say the name of the designated consignee which is written into the bill of lading is to have no effect because the warehouse, which is not named as consignee, is to be 'deemed' the consignee because of the words 'In care of,' etc., is to violate a

basic rule of construction and to substitute fiction for fact."

* * * * * * *

Again he said (Record, page 52):

"Moreover, the inference of the Commission that the warehouse 'for transportation purposes should be deemed * * * consignee of shipments to its warehouses' is authoritatively negatived by the Bills of Lading Act, 39 Stat. 545, Sec. 42 (49 USCA Sec. 122), which provides 'consignee' means the person named in the bill as the person to whom delivery is to be made. It will also be noted that the present holding of the Commission that the warehouse has 'been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed consignors and consignees,' is at variance with the principle announced by its own holding in Smokeless Fuel Co. v. Norfolk & Western R. Co., 85 I. C. C. 395, which said: 'The law seems to be well settled that the party to whom a shipment is consigned is the legal consignee and not the party in whose care the goods are shipped.' This reasonable and common sense view has the approval of textbook authorities. See Hutchinson on Carriers (3d Ed.) Vol. 2, page 755, where it is said:

"'Goods shipped to one person as consignee in care of another should be delivered to the consignee, and, in case he cannot be found then to the one in whose care they are shipped.'

"It is obvious that a railroad by undertaking performance of transportation does not by performing such transportation duties become the consignee of the goods. And if such is the case, how does the hiring by the railroad of some one else to perform a part of the railroad's services make such minor performer the consignee where the same acts, if done by the railroad, would have no such effect."

Even if the warehouse company had been the owner of the merchandise shipped it would have been entitled to reasonable compensation for any transportation services rendered

to the carrier in handling the same under the provision of Section 15 of the Interstate Commerce Act, U. S. Code, title 49, sub-Sec. 13, at page 1662.

It was under the provisions of this section that Peavey was allowed compensation for elevating his own grain in his own elevator. *I. C. C. v. Diffenbaugh*, 222 U. S. 42, 45.

In the present case the reasonableness of the compensation was not questioned, possibly because the Commission was more interested in establishing that the warehouse company must be treated as a consignor or consignee of the property handled as a basis for the contention that to pay one shipper for services and not pay another shipper for similar services was an illegal discrimination. This is more or less speculation, because the definition by the Commission of who is a consignor or consignee is not well founded or a reasonable inference or deduction from the undisputed evidence in the case.

THE THIRD QUESTION INVOLVED IN THIS RECORD IS:

Does the payment by the Pennsylvania Railroad Company to the Merchants' Warehouse Company of the agreed compensation for the services rendered by it in performing its obligations under the contracts aforesaid constitute a rebate within the meaning of the Interstate Commerce Act?

The Commissioner finds on this subject (Record, page 150):

> "The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses."

There is no evidence in the record of any kind that any payment was made to the warehouse company out of any freight rates paid to the carrier for the transportation of the merchandise loaded or unloaded by the warehouse company. Nor is there anything in the cease and desist

order of the Commission (Record, page 151) on the subject of rebates. The finding is a reason given in support of the finding that the contracts between the carrier and the warehouse company for loading and unloading freight cars is discriminatory because the carrier refused to make similar allowance to the complainants for performing similar services (Record, page 150). The word "rebate," when used in connection with the payment of freight rates, is an opprobrious epithet and when its use is justified it rightly casts discredit on any transaction it touches. In the present case the Commissioner justifies the use of the epithet by finding that the warehouse company was either the consignor or the consignee of the merchandise loaded or unloaded in or from the cars and, therefore, to pay such consignor or consignee for such services was to grant a rebate. We submit that such reasoning is far from satisfactory. It falls far short of establishing a rebate; nor do we think it was ever intended to establish the fact that the payments for the services incident to loading and unloading of freight cars were in fact rebates. If the loading and unloading of freight cars is a transportation service, as defined by the Act of Congress, which we will, under the next head of our brief, endeavor to show that it is, then it is a service which it is the duty of the carrier to perform and is one which it can perform by its own hired employes or can hire the warehouse company to do it for them. As a necessary consequence the reasonable price paid for the performance of such services can never be a rebate.

THE FOURTH QUESTION INVOLVED IN THIS RECORD IS:

Are the services rendered by the Merchants' Warehouse Company under the terms of said contracts a transportation service within the meaning of the Interstate Commerce Act?

In Section 1 of the Interstate Commerce Act, U. S. Code, Title 49, sub-section 3, at page 1651, it is enacted:

"The term 'transportation' as used in this chapter shall include * * * all services *in connection with the receipt, delivery,* elevation and transfer in transit, ventilation, refrigeration or icing, *storage and handling* of property transported." (Italics ours.)

The tariffs filed by the Pennsylvania Railroad Company carry out its contracts with the Merchants Warehouse Company as follows (Exhibits 59, 60, Record, page 693):

The Consolidated Freight Classification, #5, Rule 27, reads (Record, page 708):

"Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers and to unload from cars freight received by rail carriers carried at carload ratings."

To this rule the railroad company established "Exceptions to Official Classification" being GO-ICC #14370 as follows (Exhibit 61, Record, 697):

"at Philadelphia, Pa.

Package freight carried at carload rates will be loaded or unloaded by the carriers at the stations in Philadelphia specified below, except when handled direct to or from cars on team tracks at owner's request.

Vine Street
Walnut Street Wharf
Dock Street
Federal Street
Broad Street and Washington Avenue
30th & Market Streets
Shackamaxon
Kensington
Ontario Street
Fair Hill
North Philadelphia proper (not to include Diamond Street Yard or 12th Street Yard)

Hay carried at carload rates will be loaded and/or unloaded by the carrier at the Hay Warehouses in Philadelphia, Pa., enumerated in G. O.—I. C. C. No. 14322, G. O.—P. S. C.—Pa. No. 4813 (Agent's Index No. 17), supplements thereto or reissues thereof."

By Pennsylvania Railroad Company's local freight tariff G. O.—I. C. C. #14322 Supplement No. 6 effective May 10th, 1926, it is provided (Exhibit 60, Record, 696):

> "Rule 32. Warehouses considered freight stations during free time.
>
> "In the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. #1491 P. S. C. Pa. #86, Agent's Index #54, supplements thereto or re-issues thereof, the following warehouses in Philadelphia, Pa., are *considered freight stations during the free time.*" (Italics ours.)

This is followed by a list (Record, page 696), naming the ten warehouses of the Merchants' Warehouse Company in the City of Philadelphia which are described in the nine contracts printed in the Record, pages 455 to 526.

Under these tariffs, in consideration of the freight rates published therein, the Pennsylvania Railroad Company agrees that package freight carried by it "at carload rates will be loaded or unloaded" by it "at the stations in Philadelphia" specified in its tariffs.

The Commissioner does not express any opinion on the subject of whether or not services rendered by the warehouse company in loading or unloading freight cars under the terms of the contract were "transportation" services. He apparently concedes that they were, for he presents a series of excuses for not paying for them. He says (Record, page 147):

> "Among other things, the record is pursuasive that the contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations but are confined to the handling of merchandise for the patrons of the warehouses; and that the services performed by the contract warehouses in connection with the load-

ing or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact, performed for the benefit of the owner of the merchandise rather than for defendants."

The services were rendered, thousands of cars were loaded and unloaded every year under the terms of the contracts. Why should they not be paid? The laborer is worthy of his hire without regard to the motives that may have induced him to render his services. The warehouse company may have solicited consignments in their care; the more cars they unloaded the more money they earned. Why should they not do so? There is no law against individual enterprise. The hope of reward is a great stimulus to business endeavor and should be encouraged and not criticised or its motives impugned. We think the comments of the Commissioner were irrelevant. The question before the Commission was, were the services rendered transportation services? If they were, then, unless the contract was illegal, common honesty required that the carrier should pay the agreed price and all else is beside the question.

In the *Peavey case*, 222 U. S. 42, the Court holds that elevation referred to in Section 1 of the Act is a transportation service. In the same section, *receipt, delivery and handling of property transported* is made a transportation service.

Under sub-Section 4 of Section 1 the Act requires the carrier "to provide and furnish such transportation upon reasonable request therefor." So that we insist that under Section 1 of the Act to regulate commerce, the services rendered by the Merchants' Warehouse Company under its contracts with the Pennsylvania Railroad Company are transportation services which the carrier is required to furnish. This view is affirmed by the Supreme Court in the *Peavey case*, Holmes, J., saying, at page 47:

"As the carrier is required to furnish this part of

the transportation upon request he (Peavey & Co.) could not be required to do it at his own expense."

Again at page 46, Mr. Justice Holmes says:

"On the contrary the Act of Congress in terms contemplates that if the carrier receives services from an owner of property transported or uses instrumentalities furnished by the latter he shall pay for them."

Which means that the carrier under its tariffs has assumed the services of loading and unloading, receiving and delivering freight at the warehouse stations published in its tariffs, which it was required under the Act to Regulate Commerce, and under its tariffs, to furnish and that there is nothing in the Act which prevents the carrier from "hiring the instrumentality" for the performance of such services "instead of owning" the same. It being the obligation and duty of the carrier to load and unload package freight carried at carload rates at the stations in Philadelphia, whether or not it rendered these services by its regular staff of employees on its payroll or hired the warehouse company to do it for them, can make no possible difference.

In *United States v. Baltimore & Ohio Railroad Company*, 231 U. S. 274, it is held:

"Premises occupied and used by a common carrier as a depot or freight station may become such through contract with the owners and not necessarily by lease or purchase."

"A carrier may compensate a shipper for services rendered and instrumentalities furnished in connection with its own shipments; and if the amount is reasonable it is not a prohibited *rebate or discrimination, even if the carrier does not allow other shippers to render and furnish similar services and instrumentalities and compensate them therefor.*" (Italics ours.)

Mr. Justice Lurton, at page 287, says:

"That the plain purpose of the contracts between

the several railroad companies and the Terminal Company was to constitute the dock and warehouses of that company a public freight station is too clear for extended discussion. That the premises became such a depot through contract with the owners and not by virtue of a fee simple title or a lease is of no legal significance."

The *St. Louis Terminal* Case, 34 I. C. C. 453 illustrates the situation in the present case. In St. Louis the eastern railway lines had terminals in East St. Louis only,

"and in order to offer the public a service that was sufficiently prompt to enable those lines to secure their fair proportion of the traffic, they were compelled to make arrangements with the companies hereinbefore referred to as transfer companies, to move the freight by wagon between St. Louis and East St. Louis. As a part of the arrangement, the transfer companies undertook also to furnish and operate stations in St. Louis where they could receive and deliver freight for the carriers" (Page 456).

"These freight stations in St. Louis, hereinafter often referred to as 'off-track' stations because they are not reached by the rails of any carrier, are in buildings owned or leased by the transfer companies and are operated by the transfer companies as agents of the carriers" (Page 457).

In these buildings the transfer companies also transacted the business of warehousemen and for their services in receiving and delivering freight and transferring the same by wagon to East St. Louis or from East St. Louis to the "off-track" stations, the railway companies paid the transfer companies. Other transfer companies complained that this payment was a discrimination against them. It appeared in that case, at page 457, that

"this arrangement was made by the carriers only with such transfer companies as had warehouses that could be used as freight stations."

The first question raised in the case was, whether the railway companies could lawfully operate these "off-track" stations and it was held by the Commission that there was nothing unlawful in their doing so, citing *United States v. Baltimore & Ohio Railroad Co.*, 225 U. S. 306, and the Commission said, at page 462, citing the case of *Interstate Commerce Commission v: Peavey*, 222 U. S. 42, and *United States v. Baltimore & Ohio Railroad Co.*, 231 U. S. 274:

> "We must hold that the advantage enjoyed in their private capacity by the warehousemen conducting the 'off-track' stations for the respondents, is incidental and not undue, under the Act to Regulate Commerce as amended. These conclusions rest upon the fact that the 'off-track' stations are in good faith kept open to all shippers as public freight stations of the carriers, this being the test applied in United States v. B. & O. R. R. Co., *supra.*"

Likewise the designated warehouses of the Merchants' Warehouse Company, as stations for the receipt and delivery of carload freight by the Pennsylvania Railroad Company are, under the contracts and tariffs, in good faith kept open to all shippers desiring to use the same for the loading, unloading, receipt and delivery of freight transported or to be transported over the Pennsylvania Railroad Company.

We, therefore, conclude on this point that the services rendered by the Merchants' Warehouse Company under its contracts with the Pennsylvania Railroad Company are "transportation services" that under its tariffs and the Act to Regulate Commerce, the Pennsylvania Railroad Company is required "to provide and furnish such transportation upon reasonable request therefor." That the Merchants' Warehouse Company also conducts the business of a warehouseman at its several warehouses in Philadelphia is immaterial, and while it has an incidental advantage by reason of its performing the transportation services under employment from the Pennsylvania Railroad Company, this does not render the contract with the Pennsyl-

vania Railroad Company and the arrangement thereunder, unlawful, and such advantage is "incidental, and not undue, under the Act to Regulate Commerce as amended." This conclusion is amply sustained by the *Peavey* or *Diffenbaugh* case, the *Baltimore and Ohio* case and the *St. Louis Terminal* case above referred to.

In what other way could the carrier designate a warehouse as a freight station than the one adopted in this case, that is by designating the named warehouse as a freight station in its filed and published tariffs.

It is a public freight station if the public have a right to demand service of it. After the carrier has thus designated a warehouse as a freight station, can any one doubt the right of the public to demand service of it? It is not the extent of its use by the public that makes it a public freight station but the fact that the carrier has so designated it.

In the *Tap Line Cases*, 234 U. S. 1, Mr. Justice Day says at page 24:

> "But this conclusion loses sight of the principle that the extent to which a railroad is in fact used, does not determine the fact whether it is or is not a common carrier. It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business which is the real criterion determinative of its character."

Where its freight stations must be located is a question for the carrier to determine, at least, in the first instance. It would be for the carrier's interest to locate the stations where they would best serve the convenience of its patrons. There has been no complaint in this case of the location of the stations. The complaint in this case is that it does not make every other warehouse in the City of Philadelphia equally well equipped to perform the duties, a freight station.

If the Commission's view, that to hire one warehouseman and refuse to hire another is unjust discrimination, is to

be sustained, it would seem that the carrier had no option in determining who should be its agents, who should collect its freight rates, who should be responsible to it for the delivery of the merchandise carried to the persons entitled to receive it. An agent is a fiduciary, yet the carrier is to have no voice in selecting him. We submit this never was the law and never will be.

The good faith of the establishing of these several freight stations by the Pennsylvania Railroad for the convenience of the public in the City of Philadelphia, is fully shown by the testimony introduced in this case. We would particularly refer to the testimony of Mr. Edmund Funck, Assistant General Freight Agent of the Pennsylvania Railroad, testimony beginning at Record, page 318, and to that of Mr. Hubert J. Horan, President of the Commercial Exchange of Philadelphia, beginning at Record, page 404.

Originally railroad tracks were laid on Market Street and extended east to Eighth Street. There were tracks also on North Broad Street. Warehouses were located on both sides into which switch tracks were extended by which freight cars were delivered to the consignees for unloading and loading. When the tracks were removed from Market Street and North Broad Street the warehouses theretofore served by them were left without railroad connection and the freight intended for such warehouses had to be hauled by teams from the freight stations to the warehouses. This resulted in the stations becoming congested with freight and thereupon the Merchants' Warehouse Company was incorporated, the majority of stock in which was owned by the Pennsylvania Railroad Company. The warehouse was built in 1887 and freight cars delivered to it and unloaded by the warehouse company for the railroad company and contents stored in the warehouse for the account of the consignee, who at the beginning had ten days' free storage. As the city grew in size and business increased the railroad company, from time to time, established new freight stations in convenient localities for mak-

ing deliveries of freight to its patrons and receiving freight from them for transportation. These freight stations were established along the Delaware River front from Front and Berks Streets to Federal Street, about three miles, in the center of the City, 15th and Carpenter Streets, and in West Philadelphia at Thirty-first and Chestnut Streets. The warehouses in which these freight stations were established were either built or purchased by the Merchants' Warehouse Company, except in four instances, namely Federal Street stores, Thirty-first and Chestnut Streets, Front and Berks Streets and 15th and Carpenter Streets, which were owned by the railroad company and leased to the warehouse company. Whether the warehouses were owned or leased, they were operated under contracts substantially similar and in the same way and manner as they had been since 1887 when the first of the warehouses was erected and operated by the Merchants' Warehouse Company.

Buffington, Circuit Judge, in his dissenting opinion said (Record, page 53):

> "That the railroad may by contract constitute a warehouse a public freight station is as said by Supreme Court in United States v. Baltimore & Ohio Railroad, 231 U. S. 288, 'too clear for extended discussion.' If, then, such contract for substitution can legally be made, does it follow that because such a substitution is made with one warehouse and it is made a public freight station, that thereby the railroad has bound itself to establish as its additional public freight stations all other warehouses in that vicinity? We think not, for, as said in 276 U. S. 518, 'The grant of privileges to respondent creates no duty on the part of the railroad company to give like privileges to others and therefore there is no illegal discrimination.'"

Again (Record, page 54):

> "Commenting on the freedom of railroads to control its passenger stations, the Supreme Court in Delaware, L. & W. R. Co. v. Morristown, 276 U. S. 194, said: 'There was no duty upon petitioner (the railroad) to accord to other taxicabmen the use of its lands

simply because it had granted Welsh the privileges specified in its contract with him.' And in another case (Black & White Taxicab & Transfer Co. v. Brown & Yellow Taxicab & Transfer Co.) involving a similar question, the Supreme Court, in the same volume, at page 529 said: 'There is here no complaint by or on behalf of passengers; no lack of service, unreasonable exaction or inconvenience of the public is shown. It would be unwarranted and arbitrary to assume that this contract is contrary to public interest. The grant of privileges to respondent creates no duty on the part of the railroad company to give like privileges to others and therefore there is no illegal discrimination.' Now, if such contract as here involved be made, if there be no sinister purpose in making it, if its performance be an aid to the railroad in the movement of freights, if the public can avail themselves of this added facility, and the warehouse in good faith performs the part of the railroad in receiving and forwarding for all shippers alike their carload shipments, it would seem that such contracts and performance under them constitute a valuable and desirable aid to the railroad in the performance of its duty to transport."

In *Terminal Warehouse v. United States*, 31 Fed. 2nd 951, the Commission held in their first report that the allowances paid to the terminal company for loading and unloading of carload package freight at Baltimore and refusing to employ other warehouse companies to perform similar services were not unjustly discriminatory, unduly preferential or prejudicial, 95 I. C. C. 301. At a further hearing, however, the Commission reversed itself and held such allowances were discriminatory and thereupon issued a cease and desist order. *McCormick v. Pennsylvania Railroad Co.*, 148 I. C. C. 299.

The opinion of the Court follows along the lines of the Commission's adjudication, giving exactly the same reasons for sustaining the order that the Commission gave for making it. It casts no new light on the subject. It follows the same line of reasoning that the Commission did in the Peavey and Arbuckle cases.

Judge Soper at page 957 says:

"The contention of the Terminal Warehouse Company is that the Commission's order is wrong, because the Warehouse Company has been designated in the tariff as a public station of the carrier, and hence in this place the carrier is obliged, under the exception of rule 27, to load and unload carload freight, and may employ and pay the Terminal as its agent to do the work. *But the conclusion to which the Commission came destroys the essential premise upon which this argument is based; for it found that the Terminal Warehouses, although nominally open to the general public, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to render some warehouse service.* We are bound by this conclusion of fact, if it is supported by substantial evidence. Anchor Coal Co. v. U. S. (D. C.) 25 F. (2d) 462, 471. In our opinion, the evidence not merely supports but requires, the conclusion which the Commission has reached. It is true that 20 per cent of all carload package freight, shipped to Baltimore over the Pennsylvania, is handled by the Terminal Warehouse, and that any shipper desiring warehouse facilities, may send his goods to its platform. But these circumstances do not constitute the warehouse a public station. It is not used by shippers or consignees, who do not require or desire the services of the Terminal Warehouse Company, and either do not make use of any warehouse, or send their goods to other warehouses of a private or public character. The distinction between this situation and that in the case of U. S. v. Baltimore & Ohio Railroad, 231 U. S. 274, 34 S. Ct. 75, 58 L. Ed. 218, upon which the complaint relies, is obvious; for there the premises used by the carrier as a freight station, although furnished and operated by a nearby shipper, who used it to a greater extent than any other shipper, was nevertheless open to all shippers and actually used for the benefit of all alike." (Italics ours.)

This is the first case we have found in which the ruling of the Commission that the paying of compensation by the

carrier for transportation services to a warehousing company without making a similar allowance to warehouse companies generally were discriminatory, has been sustained by a law court. The history of the subject shows that in the *Peavey* case, 222 U. S. 42 (1902), the Commission, 10 I. C. C. 309, upheld the contract including an allowance for Peavey & Co.'s own grain. By 1907, upon a rehearing, it cut down the allowance from one and one-half cents a bushel to three-quarters of a cent, estimating that to be the actual cost, and being of opinion that to allow any profit would be in effect to permit a rebate. 12 I. C. C. 85. The following year the Commission took the last step and ordered the carrier to desist from paying any allowance on grain in which they have any interest or that has been mixed, treated, weighed or inspected in their elevators. 14 I. C. C. 315. This cease and desist order was enjoined in the District Court of the United States and on appeal affirmed by the Supreme Court, 222 U. S. 42, Mr. Justice Holmes saying at page 46:

> "We agree with the Court below that this decision is erroneous in its conception of the grounds on which under the statute an advantage may be pronounced undue."

The statement in the opinion in the Baltimore case that the station was not used by shippers or consignees who do not require or desire the services of the Terminal Warehouse Company, does not apply to the pending case because in the pending case the undisputed evidence shows that 744 cars of outbound freight loaded between January 1st, 1928, and September 30th, 1928, were brought to the station by wagon or truck and loaded directly into the freight cars by the warehouse company, which had had no previous connection with the loaded merchandise whatsoever. What the Commission has to say on this subject will be found at Record, page 148, but there is no finding that the loading of outbound freight is confined to merchandise *to which warehouse services had been rendered*. The exact finding is: "are confined to the handling of merchandise

for the patrons of the warehouse," which is a very different thing. Every railroad station has its patrons; they are those who use it for shipping or receiving freight.

Judge Soper in his opinion says that the distinction between the Terminal case and the Arbuckle case "is obvious." In the Arbuckle case the premises, though furnished and operated by a nearby shipper who used them to a greater extent than any other shipper, were *nevertheless open to all shippers* and actually used for the benefit of all alike. Judge Soper had previously pointed out that the Commission had found that the Terminal warehouse facilities were exclusively used by persons who used warehouse service. Our case thus resembles the Arbuckle case and differs from the Terminal case, because here also we have the public actually using the warehouse company freight station without employing any warehouse service whatever, thereby essentially differentiating it from the Terminal case.

In *United States v. Baltimore & Ohio Railroad Company,* 231 U. S. 274, sometimes mentioned as the "Arbuckle case." Mr. Justice Lurton at page 280 says:

> "The order of the Commission required the railroad companies to cease and desist from paying such allowances 'while at the same time paying no such allowance to the Federal Sugar Refining Co.' on its sugar brought by it on lighters to the carriers at the same rail terminals. 20 I. C. C. 200."

At page 282, the Court further says:

> "The 'allowance' to Arbuckle Brothers referred to in the order of the Commission is the consideration paid by the railroad companies to them for instrumentalities and facilities furnished and services performed in the maintenance of one of these public stations, known as the Jay Street Terminal and for the lighterage of all freight between that station and the railroad terminals on the New Jersey shore."

The order of the Commission was enjoined.

The very extensive use which shippers made of the warehouse freight stations of appellant is shown by the amounts paid by the Pennsylvania Railroad Company to appellant for loading and unloading freight cars at them. The aggregate for the four years 1926, 1927, 1928 and 1929 was $572,332.03, or an average of $143,083 per year (Record, page 179). There was no evidence in the record of the actual number of cars loaded and unloaded in each or any year. There was evidence, however, that between January 1st, 1928, and September 30th, 1928, 744 cars were at the various warehouses loaded with outbound freight received from trucks or teams (Record, page 452). The rate of payment for loading or unloading cars is thirty-five or fifty cents per ton, which would mean not less than 300,000 tons were handled in and out in an average year; this, at 30 tons per car, would mean at least 10,000 cars were loaded and unloaded per year. It is in evidence in this record (Richardson, page 386) that of the cars unloaded, thirty-five per cent at some warehouses and seventy-five per cent at other warehouses were delivered to the consignee within the forty-eight hours' free time.

On this subject Buffington, Circuit Judge, further said (Record, page 56):

> "Indeed, as we sense this case, the decisive question is whether these warehouses were in good faith made public freight stations by the railroad and whether the warehouses have honestly and in good faith and reality acted as public freight stations in the receipt of outgoing and the delivery of incoming freight. That test was clearly pointed out and made the decisive factor in the Baltimore case. Terminal Warehouse Co. v. U. S. (D. C.), 31 Fed. (2d) 951, 957. A study of that case shows that the warehouses were designated in the tariff sheets as public freight stations, but in the proofs it was shown in that case, as Judge Soper says, 'that the Terminal Warehouses, although nominally open to the general public, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to render some warehouse service.' In other words, the railroads and warehouses

in that case compelled the shipper to submit to the warehouse storage charges if he used the station. In the present case no such condition exists. The shipper simply ships and the warehouse simply receives and forwards the freight thus received without compelling any, or even contracting for any, precedent storage. In the present case any outbound shipper desiring storage or shipment, if he so desires, and any shipper not desiring warehouse facilities, may use the warehouse simply as a freight station. That the Baltimore case was decided on facts radically different from the crucial facts in this case is clear from Judge Soper's language, on page 957 of 31 F. (2d)."

The public trade bodies in Philadelphia have intervened in these proceedings to express their approval of the practice. They are represented by separate counsel who will file a brief in this court. The record shows that the three great railroad systems entering Philadelphia, the Pennsylvania, the Reading and the Baltimore and Ohio have the same practice on the subject. There is not any evidence in the record that impugns the good faith of the making of the allowances in question. No shipper has intervened to complain of or object to them in any way or manner whatsoever. The only objectors are four rival warehousemen and it would appear that their attitude to the subject is that if they can't have the allowances for themselves they will do what they can to prevent any other warehouseman getting them and to accomplish this they would destroy a system that has been in operation for over forty years to the entire satisfaction of the shippers of Philadelphia. We have not overlooked that the Commission say that the practice is a device to give a rebate but this is an unjustifiable inference or deduction from the testimony and the contracts. The fundamental proposition in this case is that in the opinion of the Commission it is discriminatory for the carrier to designate the warehouse of one company as its station and agent therein and not do the same for every other warehouse in the City of Philadelphia.

COMMENTS ON OPINION OF THE COURT BELOW.

The opinion of Thompson, J., concurred in by Dickinson, J., will be found in Record, page 30. It is a restatement of the findings of the Commission. It adds nothing to them. To discuss it in detail would only be to repeat what we have heretofore said on the same subjects. If the Commission was right in its conclusions so also is the Court below. There are however several matters to which we wish to call attention.

Judge Thompson said (Record, page 32):

> "No payments are made if the shipments are unloaded within the forty-eight hours free time."

This statement has no foundation in the Commission's adjudication or in the evidence: under the provisions of the contracts the warehouse company was to be paid for all cars loaded or unloaded by it. It is difficult to determine what the Court had in mind in making this statement unless it was accentuating and reenforcing the statement elsewhere made that the warehouse company rendered no transportation services except to merchandise to which it rendered storage service. If this is what the Court had in mind then it was mistaken as the provisions of the contracts in question will establish.

Judge Thompson further said (Record, page 36):

> "The original contracts which the Commission has declared discriminatory and prejudicial had their origin when there was nothing unlawful in contracts or arrangements between interstate carriers and the shipping public in making such allowances or deductions out of freight rates as have since been denounced and made unlawful by existing law. *So that the question before the Court is not whether the system set up was ethically bad but whether it is condemned by the law as it now is.*" (Italics ours.)

We think this excerpt from the learned Judge's opinion fairly expresses his attitude of mind toward the whole

case. Fairly interpreted we think he means that there was nothing ethically wrong in the contracts or in their performance but that such contracts under the provisions of the Interstate Commerce Act are illegal. In the final analysis that is the fundamental question in this case. We contend that the contracts in question are legal and the Court below holds them to be illegal. It is for this Court to determine whether or not the Court below was right.

The view taken by the Court below, as it appears to us, is that because the complaining warehousemen are equipped to load and unload package freight to and from cars it is discriminatory on the part of the carrier to hire the appellant to do such loading and unloading for them while at the same time it refuses to hire the complaining warehousemen to perform a like service. We submit that the carrier was well within its legal rights in so doing and that such discrimination, if it is to be so held, is not prohibited by the Act of Congress on the subject.

THE JURISDICTION OF THE COURT BELOW.

The jurisdiction of the Court was not questioned in the court below, but we are advised that the question will be raised in this court. The point to be urged is, as we understand it, that since the carriers are not parties to the suit, the warehouse companies have no status to petition for an injunction of the Commission's orders. The reliance of the Government will be on *Sprunt & Son v. United States*, 281 U. S. 249.

This case is quite different from the Sprunt case. Sprunt was a shipper not named in the Order, who relied on rights alleged to arise under the Interstate Commerce Act. The Order which we seek to have enjoined, however, provides in terms that the railroad companies (which are specifically named in the Order) shall not pay the amounts of money which the railroads have contracted to pay them. The warehouse companies' rights arise not under the Interstate Commerce Act, but independent thereof and all the warehouse companies ask of the Commission is to be let alone.

In its Opinion in the Sprunt case, this Court distinguished four earlier cases of suits to enjoin an order of the Commission by persons other than the carriers affected, saying (p. 257):

> "In each of those cases, an independent legal right of the plaintiff was affected by the order which it was sought to set aside."

A footnote points out that in two of these cases (*Interstate Commerce Commission v. Diffenbaugh*, 222 U. S. 42, and *United States v. Hubbard*, 266 U. S. 474), the right affected arose out of contracts. That is precisely the right these appellants are seeking to protect.

A vital point in the Sprunt case was that the carriers, accepting the Order of the Commission, published the rates complained of, thereby making moot the issue before the Commission. In that case, no stay of the Order of the Commission pending the appeal was granted or sought, and the Order was in effect at the time the case came before this Court. In the present case, however, such a stay has been sought and granted, and the Order is not in effect. The case, therefore, is not moot.

Under such circumstances, it would seem to be immaterial whether the railroads are or are not satisfied with the Order. The important point is that they have not taken any action to change their tariffs or to do anything in derogation of their contractual obligations to the appellants. If they are satisfied with an Order which would relieve them from their contractual obligations, they are, of course, under no obligation to ask the Court to enjoin such an order or to enter this litigation as parties plaintiff. Inasmuch as they have shown no disposition to refuse to perform their contractual obligations unless and until prevented from doing so by the Commission, there is no occasion to join them as parties defendant. We have no quarrel with the railroads. We require no Court order with regard to them, and therefore to join them as defendants would be unnecessary and vexatious.

M. HAMPTON TODD,
ALLEN S. OLMSTED, 2ND,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

APR 11
CHARLES ELMORE

OCTOBER TERM, 1930.

MERCHANTS WAREHOUSE COMPANY,
Appellant,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND JAMES GALLAGHER, ET AL.

No. 635.
October Term, 1930.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL.,
Appellants,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND JAMES GALLAGHER, ET AL.

No. 636.
October Term, 1930.

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY,
Appellant,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL.

No. 638.
October Term, 1930.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL.,
Appellants,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL.

No. 639.
October Term, 1930.

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL.,
Appellants,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND REX & COMPANY, INC., ET AL.

No. 642.
October Term, 1930.

On Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

Appellants' Brief on Behalf of Merchants Warehouse Company, Pennsylvania Warehousing and Safe Deposit Company, Commercial Exchange of Philadelphia, Philadelphia Board of Trade, Philadelphia Bourse, Grocers' and Importers' Exchange of Philadelphia, and Association of Manufacturers' Representatives, Inc.

H. EDGAR BARNES,
ALLEN S. OLMSTED, 2nd,
Attorneys for Appellants.

JOHN W. DAVIS,
Of Counsel.

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Supreme Court of the United States

October Term, 1930.

MERCHANTS WAREHOUSE COMPANY,
Appellant,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND JAMES GALLAGHER, ET AL.

No. 635.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL.,
Appellants,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

No. 636.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY,
Appellant,
vs.
THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL.

No. 638.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL,

Appellants, } No. 639.

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND WALTER A. BAILEY, ET AL,

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THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL,

Appellants, } No. 642.

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

BRIEF ON BEHALF OF MERCHANTS WAREHOUSE COMPANY, PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, PHILADELPHIA BOURSE, GROCERS' AND IMPORTERS' EXCHANGE OF PHILADELPHIA, AND ASSOCIATION OF MANUFACTURERS' REPRESENTATIVES, INC., APPELLANTS.

OPINION OF THE COURT BELOW.

The Opinion and Dissenting Opinion of the Court below are reported in 44 Fed. 2nd, 379 to 392, and also will be found at pages 30 to 58 of the Record.

JURISDICTION.

Paragraph 1 of Rule 12 has been complied with and probable jurisdiction has been noted by this Court.

STATEMENT OF THE CASE.

These Cases are in this Court on appeal from the District Court of the United States for the Eastern District of Pennsylvania. The District Court dismissed Bills filed by three Warehouse Companies, The Merchants Warehouse Company, the Pennsylvania Warehousing and Safe Deposit Company, and the Philadelphia Warehousing and Cold Storage Company, praying for an injunction to restrain the enforcement of an Order of the Interstate Commerce Commission. All three Bills were heard in the District Court as a single case, and come up to this Court on a single Record.

The Appellant Warehouse Companies own and operate public warehouses in the City of Philadelphia.* At these warehouses the Pennsylvania, Reading, and Baltimore and Ohio Railroads have, respectively, for many years, by appropriate tariffs filed with the Interstate Commerce Commission, undertaken to load and unload carload package freight. These services are performed by the Appellant warehouses under the terms of written contracts with the said carriers. Pursuant to these contracts, which are of some forty years standing, the warehouse companies load and unload carload package freight and render a variety of incidental services for the carri-

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*The Merchants Warehouse Company has ten warehouses connecting with the Pennsylvania Railroad. The Pennsylvania Warehousing and Safe Deposit Company owns or operates ten warehouses, some of which connect with the Reading Company, others with the Baltimore and Ohio Railroad Company. The Philadelphia Warehousing and Cold Storage Company has a cold storage plant on the lines of the Reading Company.

ers, which are generally known as terminal services, for which they receive a fixed compensation stipulated in said contracts. The Appellant, Merchants Warehouse Company has contracts for its warehouses with the Pennsylvania Railroad Company, the Pennsylvania Warehousing & Safe Deposit Company has such contracts with the Reading Company and the Baltimore and Ohio Railroad Company, and the Philadelphia Warehousing and Cold Storage Company has a contract with the Reading Company. These three Appellant warehouses are hereinafter referred to as the "contract" warehouses.

The validity of these contracts was never questioned until six warehouse companies in Philadelphia, which had no such contracts with the carriers, by proceedings instituted before the Interstate Commerce Commission, attacked the contracts on the ground that they were unjustly discriminatory, and unduly preferential, and that the payments made thereunder to the contract warehouses constituted a rebate in violation of the Interstate Commerce Act. These six warehouses are hereinafter referred to as the "complaining" warehouses.*

Three complaints were filed before the Commission, one against the Pennsylvania Railroad, another against the Baltimore and Ohio Railroad and the third against the Reading Company.

In the proceedings before the Commission the three complaints were consolidated, and heard as a single case. At or before the hearing, the contract warehouses, and the principal organizations of merchants in Philadelphia, interested in the trade affected, intervened on behalf of the Defendants. These organizations are: The Com-

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* The complaining warehouses before the Commission were:

James A. Gallagher;	Terminal Warehouse Company
Northeastern Warehouse Company,	Rex and Company, Inc.
Walter A. Bailey,	Industrial Cold Storage Co.

mercial Exchange of Philadelphia consisting of dealers in grain, flour and similar commodities, The Grocers' and Importers' Exchange of Philadelphia, consisting of persons who deal in canned goods, dry groceries and similar food products, The Association of Manufacturers' Representatives, Inc., consisting of distributors of manufactured products, The Board of Trade of Philadelphia, and the Philadelphia Bourse, which are merchants' organizations of broader composition. The Millers' National Federation, an organization of western shippers, intervened in behalf of the Plaintiffs. All of the above parties presented testimony and participated in the argument before the Commission.

On December 28th, 1929, Division 3 of the Interstate Commerce Commission filed its Report and Order in the case. (R. 142 to 152.) The Order required the said carriers to cease and desist from making payments to the contract warehouses for the loading and unloading of freight at Philadelphia, in accordance with the terms of said contracts, and likewise required them to cancel their tariff provisions which made the contract warehouses a part of the carriers' freight station facilities at Philadelphia.

Petitions for a re-hearing before the full Commission were denied in a formal order made by the Commission (R. 178).

Thereafter the three contract warehouses filed their Bills in the District Court, against the United States and the Interstate Commerce Commission, praying that the above Order be declared null and void. Pursuant to the statutory requirements, (Act of Congress approved October 22nd, 1913, 38 Stat. 220, U. S. Code, Title 28, Section 47), a three-judge court consisting of Circuit Judge Buffington, and District Judges J. Whitaker Thompson and Oliver B. Dickinson, was duly convened, (R. 16, 28). The

Court granted a temporary stay of the Commission's Order. (R. 18, 29.) At final hearing all of the evidence before the Commission was introduced in evidence. (R. 181.) The complaining warehouses intervened as parties defendant, and the commercial organizations above named intervened as parties Plaintiff. The carriers were not parties to the suit and have taken no part in the proceedings before the Court.

After due consideration, the Court handed down a majority opinion dismissing the Bills. (R. 30.) A dissenting opinion was filed by Judge Buffington. (R. 43.) Findings of Fact and Conclusions of Law (R. 58), were also made by the Court, to which exceptions were duly filed. (R. 64 to 66.)

The formal decree dismissing the Bills was filed November 19th, 1930, (R. 95), and the same day the contract warehouses appealed to this Court. The Commissions' order was stayed by the Court pending this appeal. (R. 109, 821, 878.) The reasons for granting the stay were set forth in a separate per curiam opinion. (R. 92.) From this order the Government has taken cross-appeals.*

The appeals of the Warehouse Companies are docketed in this Court as Numbers 635, 638 and 641, October Term, 1930. Those of the commercial organizations as Numbers 636, 639, 642, and the Government cross-appeals as Numbers 637, 640, 643 of the same term.

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* To remove any uncertainty whether the appeals of the contract warehouses brought the commercial organizations into this Court, as parties appellant, the commercial organizations subsequently filed their own petitions for appeal. These petitions were duly allowed by an Order which recited that the commercial organizations, intervenors in behalf of the Plaintiff, "are hereby joined as parties appellant to the said appeal heretofore allowed to the plaintiff" (R. 104).

SPECIFICATIONS OF ERROR.

The principal error assigned is the dismissal of the Bills and the refusal to enjoin the Order of the Commission. The detailed specifications of error, (all of which are intended to be urged here), are set forth in the Assignments of Error, (R. 96).

SUMMARY OF ARGUMENT.

I. The Contracts between the Appellant warehouses and the carriers are contracts of agency whereby the warehouses are employed to render a transportation service. This service, the carriers have, by appropriate tariff publications, undertaken to perform for the public. These contracts provide that the warehouse company shall load and unload freight received by it to be shipped over the railroad line, or received by it from the railroad for delivery to the consignees, and to render on behalf of the carrier various other services incidental to such receipt and delivery of freight. The compensation for the service, which varies according to the nature and volume of the traffic, is fixed by the contracts. These terminal services of loading and unloading carload freight are undertaken by tariffs duly filed with the Interstate Commerce Commission, and the tariffs name the contract warehouses among the stations at which this service will be performed. A substantial proportion of the freight handled through the contract warehouses receives no warehousing service whatever. The service rendered by the contract warehouses is a transportation service within the meaning of Section 1 of the Interstate Commerce Act (24 Stat. L. 379; 41 Stat. L. 479; U. S. Code Title 49, page 1651), which defines "transportation" as including "all services in connection with the

receipt, delivery, * * * storage and handling of property transported."

II. The carriers have the right to select their own agents, and the advantages incidental to such agency do not constitute unjust discrimination. A carrier may exercise its own discretion in the selection of its agents and employees to perform any part of its transportation duties. Therefore, it may contract with one warehouse for the performance of terminal services and use of facilities and be unwilling to make similar contracts with other warehouses. United States vs. Baltimore and Ohio Railroad Company, (The Arbuckle Case) 231 U. S. 274; Interstate Commerce Commission vs. Diffenbaugh, (The Peavey Case), 222 U. S. 42. The Commission has held that terminal services are transportation services, and the relation between the carrier and the person who performs the service is that of agency. Keystone Elevator and Warehouse Company vs. Director General, et al., 73 I. C. C. 273. The fact that the arrangement may incidentally be of value in the conduct of appellants' warehouse business does not make the arrangement illegal, preferential and discriminatory. United States vs. Baltimore & Ohio Railroad Company, 231 U. S., at page 290; Peavey Case, 242 U. S. 42; St. Louis Terminal Case, 34 I. C. C. 453; Delaware, Lackawanna and Western R. R. Co. vs. Morristown, 276 U. S. 182; Donovan vs. Pennsylvania Co., 199 U. S. 279; Brown & White Taxi Cab Co. vs. Brown and Yellow Taxi Cab & Transfer Co., 276 U. S. 518; Chicago & New Orleans R. R. Co. vs. Pullman Southern R. R. Co., 139 U. S. 75; Express Cases, 117 U. S. 1.

III. The contracts were made in good faith and not as a cover for any fraudulent scheme to give rebates or any other illegal advantage. The practice of loading

and unloading carload freight in the central section of Philadelphia is of long standing. The first Merchants Warehouse was built in 1887, jointly by the Pennsylvania Railroad and the shipping public, as a convenient method of handling flour. The system has extended to include the other railroads, other warehouses and other commodities. The shipping public is directly benefited, and has come to rely upon it. The railroads are benefited by prompt release of equipment and by gaining additional and necessary terminal facilities. The Government, during the Railroad Administration, continued the arrangement and increased the compensation. There has never been any secrecy or any suggestion of corrupt motives, or of injury to the shipping public.

IV. The Contract warehouse companies are not the Consignors or Consignees of freight loaded or unloaded at their warehouses. The statement of the Commission that the contract warehouses should be "deemed" the consignors of shipments from, or consignees of shipments to their warehouses, is a pure fiction. Inbound goods are billed to the shipper's order, or to the real owner, or his broker, care of the contract warehouse, and outbound goods are billed by the owner, or his broker, without mention of the contract warehouse. In the practice of the shippers of Philadelphia, the contract warehouse is a place of delivery, and an alternative of other freight houses or the team-track, and is not the consignee. The delivery of a carload of goods to two or more persons upon orders from the consignee is a practice known as split-deliveries, in effect at some of the railroads' other freight stations. This is a frequent but not a universal practice, at the contract warehouses. It does not show that the billed consignee is not the real consignee. The billed consignee is the consignee in fact. He is likewise the consignee in law, as that term is defined in the Bills of Lading Act, U. S. Code, Title 49, Section 122.

V. Payments made to the contract warehouses are not rebates. The word "rebate" as used in the Interstate Commerce Act means merely an unjust discrimination; as used in the Elkins Act (U. S. Code Title 49, Sec. 41) it means a secret departure from the published rate. The entire arrangement is provided for in published tariffs. The arrangement is well known to the shipping public which avails itself of its many advantages. There is no suggestion of corruption or underhandedness. The payments are reasonable compensation for a legitimate service and they are not rebates, Interstate Commerce Commission vs. Diffenbaugh, 222 U. S. 42.

VI. The contract warehouses are public freight stations.

The carriers by their tariffs hold themselves out as willing to receive and deliver freight at the contract warehouses. This makes them public stations. Tap Line Cases, 234 U. S. 1. The use of the contract warehouse companies' warehousing facilities is not made a pre-requisite to the use of the contract warehouses as freight stations. As a matter of fact a substantial proportion of the outbound tonnage, and from 35% to 85% of the incoming tonnage goes through the contract warehouses without using their warehouse facilities. In this respect this case differs from the Baltimore Case, Terminal Warehouse Company vs. United States, 31 Fed. 2nd, 951, and resembles the Arbuckle Case, United States vs. Baltimore and Ohio R. R. Co., 231 U. S 274.

VII. Assuming, *arguendo*, that a finding of unjust discrimination and undue prejudice under Sections 2 and 3 of the Interstate Commerce Act, 24 Stat. L. 379 U. S. Code, Title 49, pages 1653-54, was valid, the order which was made exceeded the power of the Commission in that it went beyond a requirement that the carriers cease and de-

sist from the violations of the Act. Even if the contract warehouses were shippers the power of the Commission extends no further than to require the carriers to give the complaining warehouses equal treatment with them. Its order must leave the carriers "free to remove the discrimination by any appropriate action". United States vs. Pennsylvania Railroad, 266 U. S. 191. In this case, however, the Commission, erroneously conceiving that the payment for terminal services to all the warehouses would be illegal per se, ordered that they be cancelled altogether. This violated the contract rights of the appellant warehouses, and compelled the carriers to curtail a service desirable to the public which the carriers were willing to render. The order also directs the carriers to cancel their tariff provisions naming the contract warehouses as part of their station facilities in Philadelphia. This is tantamount to ordering them to abandon freight stations. Such an order is beyond the power of the Commission.

VIII. The Court below had jurisdiction. Inasmuch as the Commission's order directed the carriers to cancel their contracts with the appellant warehouses, which are named in the order, the appellant warehouses have standing to ask the Court to enjoin the Commission's order. Their status is similar to that of the Plaintiff in Interstate Commerce Commission vs. Diffenbaugh, 222 U. S. 42, and United States vs. Hubbard, 266 U. S. 474, and differs from that of the plaintiff in Sprunt and Sons vs. United States, 281 U. S. 249.

ARGUMENT.

POINT I.

The contracts between the Appellant warehouses and the carriers are contracts of agency whereby the warehouses are employed to render a transportation service. This service the carriers have, by appropriate tariff publications, undertaken to perform for the public.

The Appellant, Merchants Warehouse Company, has nine contracts with the Pennsylvania Railroad Company, in connection with the operation of ten warehouses, which are situated on the lines of said carrier. (See contracts, R. 455-526.) These contracts are of various dates, but are substantially similar in their provisions.

The Appellant, Pennsylvania Warehousing and Safe Deposit Company has contracts with the Baltimore and Ohio Railroad Company, and the Reading Company, formerly the Philadelphia and Reading Railway Company, for the operation of ten warehouses, some of which are situate on the lines of the Reading Company, and others on the lines of the Baltimore and Ohio Railroad Company. (See Reading contracts, R. 603 to 692; see Baltimore and Ohio contracts, R. 711 to 739.)

The Appellant, Philadelphia Warehousing and Cold Storage Company has a cold storage plant on the lines of the Reading Company, which is operated under the terms of a single contract, (R. 664).

All these warehouses are situate in the City of Philadelphia, in different localities convenient for the receipt and delivery of carload package freight. These contracts are of various dates and the terms differ in some instances, but so far as all of said contracts bear on the issues of this case, they are substantially similar in their provisions, and one contract may be taken as a specimen of all of them. The contract between Appellant, Mer-

chants Warehouse Company, and the Pennsylvania Railroad Company, dated January 25th, 1917, (R. 455), runs for the period of twenty years from its date, and has for its object the handling and storage of flour, grain and other merchandise in the warehouses of the Merchants Warehouse Company situate at Delaware Avenue and Walnut Streets, in the City of Philadelphia. The essential terms of this contract are as follows:

First: The Pennsylvania Railroad agrees:

(a) To maintain railroad tracks adjacent to the warehouses, do the necessary shifting for the purpose of taking and delivering all freight cars to be shipped therefrom or destined thereto.

(b) To pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight for account of the Railroad Company, both incoming and outgoing at the said warehouses, the amounts following: Three and one-half cents (3½¢) per barrel for each barrel of flour up to fifty thousand (50,000) barrels per month; two and one-half cents (2½¢) per barrel for each barrel over the said fifty thousand (50,000) barrels per month, and during the first two years of the life of this agreement, forty cents (40¢) per ton (of 2,000 pounds) for each ton of merchandise, and during the following years that the agreement is in force, thirty-five cents (35¢) per ton (of 2,000 pounds) for each ton of merchandise, except that no payment shall be made upon bulk freight nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company.

(c) While this contract is in force the Railroad

will not make any similar contract with any other person or corporation.

Second: The Warehouse Company agrees:

(a) At all times to accord to traffic passing over the railroad company's system, preference in the facilities furnished by the warehouse over traffic passing over other lines.

(b) To promptly load and unload and handle all freight received by it to be shipped over the lines of the Railroad Company or received by it for delivery to consignees and in the case of incoming freight to promptly notify the consignees of the arrival thereof.

(c) To be responsible to the railroad company for the prompt collection of all freight and other charges upon inbound freight, payment to be made by the warehouse company to the railroad company on the fifth day of each month of freight and other charges due on account of all freight delivered to it during the preceding month, excepting, however, any such charges which the railroad company may from time to time elect to collect direct from any consignee; the warehouse company to give bond to the railroad company to secure the performance of the contract.

(d) To indemnify the railroad company for all damage to or loss of freights and to keep adequate and sufficient fire insurance.

(e) To promptly notify the railroad company of the failure of any consignee to remove freight.

(f) To indemnify the railroad company against liability on account of acts or omissions of the warehouse company.

(g) To keep the warehouse properly equipped to handle traffic promptly.

Third: It was mutually agreed that freight not moved within the free time should be treated as stored with the warehouse company for account of the owners thereof.

Fourth: That no assignment of the agreement should be valid without the consent of the railroad company.

Fifth: That the agreement should remain in effect from the first of February, 1917, for twenty years.

Sixth: If the terms of the agreement should be found to work onerously it shall be subject to revision at the end of any period of two years and if the parties cannot agree upon such revision, it shall be submitted to arbitration.

The performance of the services specified under said contracts is described in detail in the testimony of Witness Justice, (R. 399), and Witness Richardson, (R. 385), and may be summarized as follows:

(a) With respect to inbound freight (R. 399): After the cars have been placed on the sidings of Appellants' warehouses, Appellants inspect and break the seals of the cars, open the doors, unload the cars, tally the contents thereof, make note of any damaged contents, and report the damage, overage or shortage of contents to the carriers. They carry insurance upon the goods contained in the cars, and give free storage for the period of forty-eight (48) hours after arrival. They send out arrival notices to the owners

of the merchandise, and on behalf of the carriers, make collection of the freight charges. They deliver the goods to the consignee, or to anyone presenting an order from the Consignee directing the delivery of a portion or all of the goods.

(b) With respect to outbound freight (R. 385): The shippers bring the freight to the receiving doors of the warehouses with their shipping papers, and direct the warehouses to load the freight. The warehouse companies take the freight off the platform and place it in the car, properly stowed away. They then seal the car, take the Bill of Lading, which has been prepared by the shipper, to the Railroad freight agent having jurisdiction, and after its signature, delivers the signed Lading to the shipper.

The undertaking by these three trunk lines that serve Philadelphia to load and unload carload traffic carried at carload rates is in the nature of an exception to Rule 27 of the Consolidated Freight Classification, which provides as follows, (R. 708, 696, 697):

"Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers and to unload from cars freight received by rail carriers carried at carload ratings."

This general rule that the owner shall load and unload carload freight, (R. 708), has numerous exceptions, and among these is the following exception, which is set forth in the tariffs of the Pennsylvania Railroad, (R. 708, 710), providing as follows:

"At Philadelphia, Pennsylvania, package freight carried at carload rates will be loaded or unloaded by the carriers at the stations in Philadelphia specified

below, except when handled direct to or from cars on team tracks at owner's request."

The tariff provided (G. O. I. C. C. #14322 Supplement No. 6, effective May 10th, 1926):

"Rule 32. Warehouses considered freight stations during free time.

"In the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. #1491, P. S. C.—Pa. #86, Agent's Index #54, supplements thereto or re-issues thereof of the following warehouses in Philadelphia, Pa., are considered freight stations during the free time."

Next follows in the said tariff a list of the warehouses of the Merchants Warehouse Company, which are by this tariff, considered freight stations of said carriers.

The Baltimore and Ohio Railroad Company in like manner, in tariffs filed with the Commission, has undertaken to load and unload carload package freight at Philadelphia, and has made designated warehouses of the Pennsylvania Warehousing and Safe Deposit Company its freight stations for the purpose, whereas the Reading Company took the view that publication in the tariffs was not necessary, as the warehouses of the Pennsylvania Warehousing and Safe Deposit Company were included as a part of its railroad freight terminals which they immediately adjoined.

The arrangement which these carriers have made with the so-called contract warehouses results in the expeditious handling of carload package freight at these twenty-one convenient public warehouse stations, and insures the release of railroad cars and equipment in a manner such as otherwise could not be accomplished. Track and platform delivery, which would replace the

present arrangement would retard the movement of railroad equipment and not only result in loss to the carriers, but cause congestion in the clearance and distribution of freight and expense to the shippers. As was said by Judge Buffington, in his dissenting opinion, in the lower Court, "Moreover, it goes without saying that the instant discharge of carload freights made by the contract warehouses and the consequent return to service of the cars, instead of allowing such cars to congest on railroad sidings, and await discharge by a consignee at the end of forty-eight hours, is a **basic factor in prompt railroad freight service.**" (R. 48.)

The services rendered to the carriers are attested by the fact that in the case of the Pennsylvania Railroad, for the first nine months of 1928, the year during which the testimony before the Commission was taken, there were 744 cars of outbound freight loaded by the Merchants Warehouse Company, which is at the rate of about 1000 cars per year. This traffic was brought to the platforms of the warehouse company, as a public freight station, by wagon and truck, and loaded directly into the freight cars for shippers who had no previous connection with the warehouse company whatsoever. (R. 439, 452.) Approximately 10,000 cars a year are handled by this one warehouse company, the greater portion of which constitutes inbound freight. A large proportion of the freight received at the warehouses from the carriers is delivered to the consignees within the 48 hours free time provided in the railroad tariffs. No payment whatsoever is received by the appellant warehouse companies from shippers or consignees for the use of the facilities and services afforded. It is a transportation service rendered for the three carriers mentioned. In some of the warehouses of the Merchants Warehouse Company 35% of the merchandise received is delivered within the 48 hours free time.

At other of its warehouses 75% of the amount so received was delivered to the actual consignee and not warehoused at all (R. 386).

At the Pennsylvania Warehousing and Safe Deposit Company stations, 40% to 60% of incoming freight was taken away without being stored. (R. 401.)

At the Philadelphia Warehousing and Cold Storage Company stations, 80% of the merchandise received was delivered within the 48 hours free time and no storage paid. (R. 310.)

It cannot be denied in truth or in fact that a transportation service is being rendered by these public stations of the carriers at the warehouse companies. Judge Buffington, in his dissenting opinion, finds these facts, in the following language:

> "We have already noted some of the facts in reference to the use of these warehouses as public freight stations and reference is further made to the fact that 35% at some of the contract warehouse stations and 75% at others were delivered to the actual consignees within the forty-eight hours of free time and were not warehoused at all. At the Pennsylvania Warehousing stations from 40 to 60% of incoming freight were taken away without being stored, and at the Philadelphia Warehousing and Cold Storage Station 80% were so taken." (R. 57).

The character of the service rendered or the instrumentality used in aid of transportation may vary in the several cases. In the one case the facility may be a dock, a warehouse, a car float, a steam-lighter or a grain elevator. It may be a service of elevating grain, loading or unloading freight, lighterage of merchandise, storage, refrigeration or icing of the property and goods transported.

The true test is whether the service or facility is included within the term "transportation" and the instrumentalities and facilities connected therewith. The answer is to be found in the first instance in the Interstate Commerce Act, Section 1, wherein it is provided (24 Stat. L. 379; 41 Stat. L. 479; U. S. Code Title 49, page 1651):

> "The term 'transportation' as used in this Act shall include locomotives, cars, and other vehicles, vessels, **and all instrumentalities and facilities** of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and **all services in connection with the receipt, delivery,** elevation and transfer in transit, ventilation, refrigeration or icing, **storage and handling** of property transported."

There is nothing in the Interstate Commerce Act which prevents the Carrier assuming the obligation of loading and unloading carload freight, and when it does so by proper tariff publication, it necessarily becomes a duty which it must perform. There is nothing in the Act that precludes the performance of the duty through such agencies as it chooses to employ.

POINT II.

The carriers have the right to select their own agents. The advantages incidental to such agency do not constitute unjust discrimination.

By these contracts the carriers have made the appellant warehouse companies their agents for rendering a transportation service. It is well settled that a carrier

may exercise its own discretion in the selection of its agents and employees to perform any part of its transportation duties. Therefore, it follows that it may contract with one warehouse for the performance of terminal services and use of facilities and be unwilling to make similar contracts with other warehouses. It does not follow that it is a discrimination or unlawful preference against the one who is not so selected as an agent of the carrier. In other words the advantages incidental to such an agency contract do not constitute unjust discrimination within the meaning of the Interstate Commerce Act.

At this point the attention of the Court may be called to the striking analogies between the present case and the decisions of this Court in

United States vs. Baltimore & Ohio Railroad Company, (The Arbuckle Case), 231 U. S. 274

and in

Interstate Commerce Commission vs. Diffenbaugh (The Peavey Case), 222 U. S. 42.

In all three cases there are involved contracts whereby the carriers employed others to render a portion of their transportation service. In all three cases competitors of the agents so employed by the carriers filed complaints before the Commission that such contracts were unjustly discriminatory and unduly preferential, and that the payments made for the services rendered constituted, in fact and in law, rebates. In all three cases the Commission ordered the practices to cease, and declared that the payments made were rebates.

This Court in the Arbuckle and Peavey Cases annulled the orders of the Commission and sustained the validity of the contracts.

It is respectfully submitted that an examination of the facts and decision of this Court in the so-called Arbuckle Case will show it to be decisive of the case at bar.

United States vs. Baltimore & Ohio R. R. Co., 231 U. S. 274.

Arbuckle Brothers Sugar Company, acting under the name of "The Terminal Company", entered into a contract with the Baltimore and Ohio Railroad Company and other carriers to perform certain terminal and lighterage services from Brooklyn to Jersey City. The Arbuckle contract provided as follows: (231 U. S. 283.)

> "2. The Terminal Company will receive at the New Jersey terminals all freights, in or out of cars, intended for delivery at the aforesaid freight station and safely convey the same to the premises and there make delivery to the consignees. It will also receive and load into cars all freights which may be delivered to it at its said premises for transportation over the lines of any of said railroad companies and carry and deliver the same to said railroad company's New Jersey rail terminals.
>
> 3. For the facilities supplied and the services performed each of the railroad companies agrees to pay on freight in and out of the station, a compensation measured by the tonnage handled for each such railroad of four and one-fifth cents per hundred pounds on freight originating at or destined to points west of what is called 'trunk line territory', and on freight originating at or destined to points east thereof, three cents per hundred pounds."

The Arbuckle Company was itself a large shipper of freight at said station and received the same payments for terminal services for its own freight as upon the ship-

ments made by other persons. The Federal Sugar Refining Company, a competitor of Arbuckle Brothers had its refinery at Yonkers on the Hudson River, just outside of New York Harbor, and performed on its own account the same services in connection with the shipments of its sugar as were performed by Arbuckle at its contract station. The carriers refused to make any payment to the Federal Company, which thereupon filed its complaint with the Commission, alleging undue preference and discrimination on the part of the carriers in making payments to the Arbuckle Company and in refusing to make like payments to the Federal Company. The Commission decided that the arrangement with the Arbuckle Company was discriminatory and preferential, that the payments made were rebates, and ordered the practice discontinued.

This Court annulled the order of the Commission, sustained the validity of the arrangement, and of the payments to the Arbuckle Company. With respect to making the warehouse of the Arbuckle Company a public freight station the Court said, (at page 287):

> "That the plain purpose of the contracts between the several railroad Companies and the Terminal Company was to constitute the dock and warehouses of that company a public freight station is too clear for extended discussion. That the premises became such a depot through contract with the owners and not by virtue of a fee simple title or a lease is of no legal significance. Railroad Commission of Kentucky v. L. & N. Railroad, 10 I. C. C. Rep. 173, 175; Cattle Association v. C. B. & Q. Railway, 11 I. C. C. Rep. 277."

This Court held that under such a contract Arbuckle Brothers became the agents for the several carriers and said, (at page 290):

"Upon all of the conceded facts of the case, we must conclude that the contracts by virtue of which the premises owned by Arbuckle Brothers were converted into a public freight station under their management as agents for the several carrier lines were contracts made in good faith and not **as a cover for any fraudulent scheme to give rebates** or any other illegal advantage. The case must turn here, as it did before the Commission and in the Commerce Court, upon the question whether the allowance to Arbuckle Brothers of compensation upon their own shipments was for instrumentalities and services accessorial in character."

This Court further said, (at page 289):

"The order of the Commission is made to rest upon an erroneous assumption that the services performed by Arbuckle Brothers in respect to their own westbound shipments of sugar after the delivery of such sugar at this station is a shipper's service, done for their convenience, with their own facilities, and, therefore, an accessorial service for which they cannot be allowed compensation unless a similar compensation is allowed to the Federal Sugar Refining Company for the lighterage of its sugar to the west shore railroad terminals.

That certain advantage inured to Arbuckle Brothers from the fact that their refinery was so near this public station that their product might be trucked or carted to the station at slight cost is obvious. That this was a consideration which operated as an inducement to make these contracts may be true. But this mere advantage of nearness was one which they shared in common with every other shipper who chanced to be near a shipping station.

That they were large shippers was also more or less an inducement to the railroads to place their depot in a locality which would tend to secure their shipments as against rival carriers may also be conceded. **But these were business considerations which are far from showing any purpose to give them any illegal preference or to discriminate against other shippers."**

In sustaining the payments made by the carriers for the services, this Court said, (at page 296):

"To say that the 'allowance' made to Arbuckle Brothers is an allowance for lightering their own sugar across the river is to only half state the case. This so-called allowance is not only for such lighterage service, **but is also compensation for the use of all of the terminal properties, docks, warehouses, tracks, steam lighters, car floats and every instrumentality used under the contract. It includes the services and responsibility of Arbuckle Brothers, as agents, for the several lessees using the station, and their staff of employees engaged in receiving, delivering, loading and unloading freight thus received, both incoming and outgoing.** As the measure of compensation is the tonnage in and out of the station and as this compensation is paid by the several railroads maintaining the station in proportion to the tonnage which they severally handle, there is a sense in which it is in part an allowance to Arbuckle Brothers upon their own shipments. But they receive the same compensation upon the tonnage of every other shipper through that station, and it is the aggregate of the compensation which must determine the reasonableness of the allowance when we come to deal with it as an allowance to them for services or instrumentalities furnished, under Section 15 of the Act to Regulate Commerce.

That the compensation of three and four and one-fifth cents per hundred pounds upon the total tonnage in and out of this station is not unreasonable was and is not challenged, and therefore we pass that subject by."

The Arbuckle case goes beyond the present case inasmuch as payments were made for services rendered in connection with freight of which Arbuckle was the owner, whereas the Appellant warehouses here were not the owners of the goods received or shipped by them. (R. 148.) This Court said in the Arbuckle Case (at page 293):

"Upon the other hand, if the lighterage of the Arbuckle sugar was included in the through rate from the Jay Street station, and a part of the transportation which the railroads were under obligation to perform, and that lighterage was done by Arbuckle Brothers at the instance and procurement of the carriers, they, as owners of the freight thus transported, **were entitled to demand a compensation reasonably commensurate with the facilities furnished, and the services performed.** Wight v. United States, 167 U. S. 512; General Electric Company v. New York Central Railroad, 14 I. C. C. Rep. 237; Interstate Commerce Commission v. Diffenbaugh, 222 U. S. 42, 46.

In the case last cited, it is said:

'The act of Congress in terms contemplates that **if the carrier receives services from an owner of property transported, or uses instrumentalities furnished by the latter, he shall pay for them.** That is taken for granted in Section 15; the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum in case there is

complaint (or now, upon its own motion. Act of June 18, 1910, c. 309, section 12, 36 Stat. 539, 551)'."

The Commission has recognized and specifically held that such terminal services are transportation services, and that the relation is that of agency. It so decided in:

Keystone Elevator and Warehouse Co. vs. Director General, et al., 73 I. C. C. 273.

In this case, the Keystone Elevator Company, which was complainant in a proceeding before the Commission, operated a grain elevator as agent for the Pennsylvania Railroad at North Philadelphia, Pa., for the receipt and delivery of freight. The revenues of complainant were derived in part from payments made by the railroad and in part from the charges paid by shippers for various services, including elevation, storage, bagging, mixing, etc. Complainant had no interest in any of the traffic handled through the elevator, and, therefore, was not a shipper or owner of property transported. A proceeding was instituted by the complainant seeking reparation, after an increase in the payment had been made by the Director General, the complaint alleging that the payment prior to the increase had been unjust and unreasonable.

In dismissing the complaint the Commission said:

"While complainant undoubtedly performs a transportation service, it does so, not as an independent entity, but **as agent of the Pennsylvania under contract. The service rendered is one which the Pennsylvania, by the publication of charges in its tariffs, holds itself out to perform.** Complainant stands in much the same position as an employee of the railroad and cannot be considered a common carrier whose compensation is to be derived from divisions of joint rates.

Furthermore, complainant has been unable to point out how the making to it of allowances which were unreasonably low would contravene any provisions of the law which we administer."

In the Peavey Case (next following), this Court again annulled an order of the Commission where the Carrier made payment for terminal services in connection with the handling of grain:

Interstate Commerce Commission vs. Diffenbaugh (the Peavey Case), 222 U. S. 42.

The Commission had instituted a proceeding to inquire into the legality of a contract between the Union Pacific Railroad and Peavey & Company whereby the Carrier made the private grain elevators of the Peavey Company its terminal "station" for the delivery and transfer of grain carried over its lines, constituted the Peavey Company terminal agents to receive, deliver, store and transfer the grain, and paid it a stipulated compensation and allowance for the use of its premises and for its services. Peavey & Company were also grain dealers and shippers of grain over the lines of the carrier on their own account, and received the same allowance for handling their own grain as for the grain of others. The Commission found the contract and payments made thereunder to be preferential and discriminatory, to amount to a rebate, and ordered the same to be discontinued. This Court annulled the Order of the Commission, and sustained the payments. The Court said (at page 46):

"The ground on which the payment to owners of grain finally was held to be a rebate (by the Commission) had been considered from the beginning, and, as we have said, had been brought to the mind of Congress. It is that when the owners of the elevators

own the grain put into them, they have the opportunity to perform other services to the grain in the way of treatment, or cleaning, clipping, and mixing the grain, which, although not included under the term 'elevation' or paid for by the railroad, it is an advantage to them to be able to perform at the same time. This advantage is thought (by the Commission) to create an undue preference and unjust discrimination. * * * The ground of the decision is that even an honest payment of the bare cost of elevating grain in transit gives an undue advantage if the elevator owner also owns the grain. * * * We agree with the Court below that this decision is erroneous in its conception of the grounds on which, under the statute, an advantage may be pronounced undue, and its assumption that Congress has left the matter open by merely permissive words. * * *

"The law does not attempt to equalize fortune, opportunities or abilities. On the contrary, the Act of Congress in terms **contemplates that if the Carrier receives services from an owner of property transported or uses instrumentalities furnished by the latter, he shall pay for them.** That is taken for granted in Section 15; the only restriction being that he shall pay no more than is reasonable, and the only permissive element being that the Commission may determine the maximum in case there is complaint (or now, upon its own motion) * * * there is nothing to prevent his (the carrier) hiring the instrumentality instead of owning it."

Moreover, the fact that the arrangement between Appellants and Carriers may incidentally be of value in the conduct of Appellants' warehouse business, furnishes no ground for presuming that the arrangement is in consequence illegal, preferential and discriminatory.

In the **Peavey Case**, 222 U. S. 42, the Court said:

"The law does not attempt to equalize fortune, opportunities or abilities."

In **United States vs. Baltimore and Ohio R. R. Co., 231 U. S. 290**, the Court said:

"That certain advantages inured to Arbuckle Brothers from the fact that their refinery was so near this public station that their product might be trucked or carried to the station at slight cost is obvious, * * * but these were business considerations which are far from showing any purpose to give them any illegal preference, or to discriminate against other shippers."

In the **St. Louis Terminal Case, 34 I. C. C. 453**, the Commission said (at page 462):

"* * * We must hold that the advantage enjoyed in their private capacity by the warehousemen conducting the off-track stations for the respondent, is incidental and not undue, under the Act to Regulate Commerce as amended."

The fundamental proposition is ably and tersely stated by Judge Buffington in the dissenting opinion, when he says, (R. 53):

"That the railroad may by contract constitute a warehouse a public freight station is as said by Supreme Court in United States v. Baltimore & Ohio Railroad, 231 U. S. 288, 'too clear for extended discussion'. If, then, such contract for substitution can legally be made, does it follow that because such a substitution is made with one warehouse and it is made a public freight station, that thereby the railroad has bound itself to establish as its additional

public freight stations all other warehouses in that vicinity? We think not, for, as said in 276 U. S. 518, 'The grant of privileges to respondent creates no duty on the part of the railroad company to grant like privileges to others and therefore there is no legal discrimination'. Indeed it would seem the mere statement of the proposition is its own answer. Now if the railroad can legally contract with one warehouse to make it a public freight station and if thereby it does not obligate itself to make every other warehouse a public station, it follows that in consideration of the designated warehouse agreeing to become a public station, the railroad may lawfully agree that it will not make any other warehouse a public station. For it will be observed that no warehouse has any general right to demand it be made a public freight station, but that it can be made such only when it and the railroad contract it shall be made such freight station.

Commenting on the freedom of railroads to control its passenger stations, the Supreme Court, in 276 U. S. 194, said 'There was no duty upon the petitioner, (the railroad) to accord to other taxicab men, the use of its lands simply because it had granted Welsh the privilege specified in its contract with him'. And in another case involving a similar question, the Supreme Court, in the same volume, at page 529, said 'There is here no complaint by or on behalf of passengers; no lack of service, unreasonable exaction or inconvenience of the public is shown. It would be unwarranted and arbitrary to assume that this contract is contrary to public interest. **The grant of privileges to respondent creates no duty on the part of the railroad company to give like privileges to others, and therefore there is no illegal discrimination.**"

The proposition that it is not unjust discrimination for a carrier to employ one agent of its own selection to perform a part of its public duties, and to refuse to make similar contracts with other parties, is fully supported by the following cases:

Delaware, Lackawanna & Western R. R. Co. vs. Morristown, 276 U. S. 182; 72 Law. Ed. 523.

The Court said, at page 194:

"There was no duty upon petitioner to accord to other taxicab men the use of its lands simply because it had granted Welsh the privilege specified in its contract with him. * * * Petitioner, (the railroad company) had no contract relations with taxicab men other than Welsh and owed them no duty because they did not have any business with it. The enforcement of the ordinance here assailed would operate to deprive petitioner of the use of the land in question and hand it over to be used as a public hack stand by the individual defendants and others."

Donovan vs. Pennsylvania Co., 199 U. S. 279.

Mr. Justice Harlan said, at page 296:

"The railroad company was not bound to accord this particular privilege (to come upon the premises of the railroad company for the purpose of transferring passengers and baggage) to the defendants simply because it had accorded a like privilege to the Parmelee Transfer Company, for it had no contractual relations with the defendants, and owed them as hackmen no duty to aid them in their special calling."

Great Northern Rwy. Co. vs. Minnesota, 238 U. S. 340.

Mr. Justice McReynolds said, at page 346:

"A railroad's possessions are subject to its public duty, but beyond this and within charter limits, like other owners of private property, it may control its own affairs."

Brown & White Taxi Cab Company vs. Brown and Yellow Taxi Cab & Transfer Co., 276 U. S. 518; 72 L. Ed. 681.

Chicago, St. Louis & New Orleans R. R. Co. vs. Pullman Southern Car Co., 139 U. S. 75; 35 L. Ed. 97.

Express Cases, 117 U. S. 1; 50 Law Ed. 24.

POINT III.

The contracts were made in good faith and not as a cover for any fraudulent scheme to give rebates or any other illegal advantage.

This Court, as pointed out above, in the case of **United States vs. Baltimore and Ohio Railroad Company, 231 U. S. 290,** in referring to the Arbuckle contracts, placed emphasis upon the fact that the contracts therein were "made in good faith and not as a cover for any fraudulent scheme to give rebates, or any other illegal advantage". This may truthfully be said of the contracts which are at issue in the present case.

These contracts go back to the time when railroad tracks were found on Market Street and on North Broad Street, now in the very heart of the City of Philadelphia. In the Report of the Commission the fact that the system is of long standing is frankly conceded. In its Report in this case the Commission said:

"Defendants' practice of loading and unloading carload freight at Philadelphia has been in effect for many years. According to the Pennsylvania the practice first started in connection with the receipt and delivery of freight at waterfront stations having no team-track facilities. In time the practice spread to include other Philadelphia stations, not only on the lines of the Pennsylvania, but also on the Baltimore & Ohio and the Reading." (R. 146.)

The original Merchants Warehouse was built in 1887, and was owned in part by the Pennsylvania Railroad and the public. At that early date freight cars were delivered to it and unloaded by the warehouse company for the railroad company for the account of the consignees, who then had ten days free storage. New warehouses were established in order to serve public convenience as the City increased in size, and these warehouses were operated under contracts substantially similar to the original contract of 1887.

Representatives from the Commercial organizations of the City of Philadelphia voluntarily intervened in the proceedings before the Commission and testified to the sound economic necessities which were responsible, in the first instance, for the making of these contracts, and which at the present time afford ample justification for their continuance. As an example, Hubert J. Horan, President of the Commercial Exchange testified to the important bearing which this system has upon the handling of flour in connection with the food supply of the City of Philadelphia. He said (R. 408):

"I do not see how it would be possible for a flour man today to go back to the old method of handling flour, which was in effect prior to 1887. When you take into consideration the tremendous growth of Philadelphia since, and that we have to make deliveries in

almost every part of Philadelphia,—now for West Philadelphia as an illustration, we use 31st and Chestnut; for Kensington we use the warehouse up there; downtown we use 15th and Carpenter, Front and Federal, or Central we would use Front and Chestnut. To get warehouses we couldn't get railroad connections today, I don't believe, and to make an economical delivery for the benefit of the people,—the consumer, it would be an impossibility, and the cost would grow to such tremendous figures that I don't know, we would all have to localize our business. In other words, we could not make distribution really economically over the city of Philadelphia today."

It was his judgment that if the present system were changed, a Philadelphia dealer in freighted flour could not continue in the flour business. (R. 409)

William B. Gheen, Assistant freight traffic manager of the Reading Company, testified as follows, (R. 361):

"These contracts were made many years ago, and of course there is no one available who can state of their own knowledge as to the conditions that brought about these agreements, but from general information that can be obtained, the railroad companies at that time felt the need of additional facilities, where this carload package freight could be unloaded and taken care of, delivered, where additional facilities could be provided for storage and general service that might be required by the commercial interests of Philadelphia. It was also a factor advantageous to the carriers in having the equipment promptly released, as would not be the case on team track deliveries, and that in my belief brought about these contracts with the warehousing concerns."

An official of the Baltimore and Ohio Railroad Company thus explained the origin of these contracts, (R. 367):

"All my information as to the history of the arrangements with the Pennsylvania Warehousing & Safe Deposit Company, and what brought it about is hearsay. As the contract shows, the original contract, it was made in 1897, at the time the Baltimore and Ohio Railroad was in the hands of receivers. In fact the contract was made by the receivers. At that time the facilities of the Baltimore and Ohio Railroad were limited, and the receivers were quite anxious to increase the facilities here in some manner, shape or form, which would enable them to secure a much larger tonnage into and out of Philadelphia than had been handled."

The fact that the present arrangement inures to the benefit of the carriers and the public, negatives conclusively any assertion that there was a lack of good faith in the making of the contracts, or that there was any corrupt motive, vicious purpose, or concealed or purposed fraud in their making.

The United States Government took over the railroads during the war, and not only continued the arrangement for loading and unloading carload freight at appellants' warehouses, but made certain increases to the warehouse companies in the rates of compensation payable for such services. (R. 322). This is one more evidence of the good faith of the arrangement, as well, of course, as proof of the reasonableness of the payments made. There is no hint of secrecy or underhandedness in the arrangement. The Commission's report may be scanned in vain for any suggestion that the system is injurious or is not beneficial to the shipping public.

The only persons objecting to the arrangement are the six complaining warehouses. The gravamen of their complaint is that they are handicapped in soliciting the public for business.

Weighing all these evidential factors and findings, Judge Buffington, in his dissenting opinion, summarizes the situation as follows (R. 49):

"Seeing then that this contract warehouse system is shown to be a practice of forty years standing; that similar contracts were from time to time made by the Federal Court of this District through its receivers; that these contracts were acted upon by the Government during its operation of the railroad; that no shipper is complaining of any favoritism to competitors or burden imposed on him; that the large commercial bodies have felt the issue was of such vital importance to the Commerce of Philadelphia as to constrain them to intervene and oppose the unsettling of the tried-out practice of a generation, and that the only parties who complain are six warehouses, the gravamen of whose complaint is that they have not been made by the several railroads public freight stations; that the order of the Commission does these six warehouses no good in that it does not require the railroads to make these six warehouses public freight stations, but only compels the railroads to no longer make the twenty-four warehouses public freight stations for it, considering, we say, that such is the practical, commercial freight-handling situation before us, we next inquire whether the situation **was an illegal one which called for the preventive power vested in the Interstate Commerce Commission to put an end to it. There is no proof of any corrupt motive, vicious purpose, or concealed or purposed fraud. Everything has been done openly and above board.** The railroads have not and are not taking part in the controversy. No shipper is complaining and, as a practical question, the case resolves itself into a business dispute between twenty-four contract warehouses and six non-contract ones, with the Interstate Commerce Commission taking the part of the lat-

ter. Does the case warrant the order that body has made in supposed relief of these six? We say supposed relief, for in point of fact the order gives no affirmative relief to the six and only stops the present practice of the twenty-four. **Its anticipated effect is to lessen railroad efficiency. It deprives shippers of the benefit of freight loading and unloading at twenty-four convenient public freight stations and it puts an end to a business system which the twenty four warehouses have carried on in some cases for nearly forty years, and that without complaint.**

POINT IV.

The contract warehouse companies are not the consignors or consignees of the freight loaded or unloaded at their warehouses.

"The only relation that is subject to the Commission", says Mr. Justice Holmes in Ellis vs. Interstate Commerce Commission, 237 U. S. 434, 444, "is that between the railroads and the shippers". A finding that the contract warehouses are shippers is therefore a necessary prerequisite to the Commission's jurisdiction in this case. This was recognized by the Commission in the two McCormick cases. McCormick Warehouse Co. vs. Pennsylvania Railroad Co., 95 I. C. C. 301,—148 I. C. C. 299. At the first hearing, the McCormick Warehouse admitted that it was not a shipper or receiver of freight and the Commission concluded that it therefore had no relation to the common carrier, which could result in a discrimination against it in violation of the Interstate Commerce Act. At the second hearing, the complainant contended that it was a shipper, persuaded the Commission to that effect, and the Commission thereupon took jurisdiction.

The necessity of such a prerequisite was recognized in this case too. As Judge Buffington so well puts it,

> "It is upon this false assumption of the warehouse being the consignee that this entire proceeding is bottomed." (R. 53)

The Commission made two findings relevant to this point, viz:

> "The evidence indicates that no allowances are made on traffic consigned to or by the contract warehouses as such. The form of billing customarily used in the consignment of goods to the contract warehouses is to a named party care of the warehouse at which the carrier is to make delivery". (R. 145)
>
> "The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses." (R. 148)

The first finding is a brief statement of an admitted fact. It fails to mention that the customary form of billing outbound shipments is by a named party to a named party without any mention at all of the contract warehouse.

The second finding is as Judge Buffington points out (R. 51) not a finding of fact at all.

Just what is meant by the statement that the contract warehouses have been "given dominion over such goods for transportation purposes" is far from clear. When a shipper delivers his goods to the railroad company for transportation, he gives the railroad company "dominion over such goods for transportation purposes". If this is the sense in which the Commission uses the phrase, then, of course, that finding does not support the conclusion that the party so given dominion over the goods, is the consignor

thereof. If the Commission uses the phrase to signify the legal status of a shipment consigned to X, care of Y, then it is not a finding of fact at all but a conclusion of law. When the Commission says that the warehouse company should be **deemed** the consignors or consignees, what is meant is that the legal situation is the same as if the warehouse were the consignee. This is a plain invention.

At another point, the Commission makes a distinction between substance and mere form. The gist of the Commission's finding is that the contract warehouses, although they are not parties to the billing, have no contractual relationship with the carriers, (other than the contracts of agency), and so far as any question connected with the law of contracts, or the law of shipper and carrier is concerned, have no rights, nevertheless, so far as the Interstate Commerce Commission Act is concerned, they are consignees in substance, although not in form.

With this contention, we take sharp issue. Whatever the form, it is the merchants who are in substance the consignees.

If the warehouse company is in substance the consignee, what is the relation of the owner of the freight? How many consignees can a single shipment have? A dealer in flour who buys two carloads of flour at Buffalo or Minneapolis and causes them to be shipped to him at Philadelphia, is the consignee thereof in both form **and** substance. Does it matter that one is billed to him in care of the public warehouseman with whom he chooses to deal, and the other at a public team track in care of the teamster with whom he chooses to deal? Does it deprive him of his status of consignee that he expects to employ the warehouseman and the truckman to render their respective services after the transportation shall have been completed?

The testimony of the persons beneficially interested in the goods,—owners, buyers, sellers and dealers, as distin-

guished from warehousemen—shows clearly that they, and not the contract warehouses, are in a real and substantial sense, the shippers or consignees. This is quite as true of the shippers called by the complainant (R. 240 to 243 and R. 254 to 266) as by those called by the intervenors in behalf of the defendant. (R. 404 to 423) Referring to themselves as **patrons** of the warehouses, they speak of the goods shipped **by** them or **to** them through the contract warehouse. (R. 240, 241) Flour is usually shipped by western millers to the millers' own order, care of the contract warehouse. The bill of lading is attached to a draft on the Philadelphia buyer for the purchase price. The western millers" sole complaint with the system was that the unloading of flour into the warehouse without the surrender of the bill of lading, encourage buyers who had no demurrage charges hanging over them, to postpone the payment of the draft. They said it was commercially impossible to consign the flour for track delivery because the buyers insisted on warehouse delivery. The very nature of this dispute (which was the principal subject of the testimony of five witnesses) shows that the millers consider themselves the shippers and consignees, and no more deemed the warehouse the consignee than they deemed the team track the consignee.

The testimony of the eight shipper witnesses, called by the two sides, in no wise conflicts with regard to the question of who is the real consignor and consignee. That testimony shows that the contract warehouse merely receives and loads or unloads and delivers the freight on behalf of the carrier, and in some cases, stores it as public warehousemen. It is a total stranger to the commercial transaction behind the transportation. It does not control the billing, does not control the routing, does not pay the freight, does not determine when delivery is to be made, nor to whom. It is the consignee neither in form nor in substance. The form follows the substance. In substance,

as in form, the owner or seller is the consignor. In substance, as in form, the consignee is either the seller or the buyer or the broker.

We submit that the undisputed testimony shows that the shippers are, in fact, and deem themselves to be the consignors and consignees, and consider the contract warehouse companies as the agents of the railway.*

We submit that the Commission should not dismiss so cavalierly the so-called "form" of the transaction. Who is the Consignee and who is the Consignor in a Bill of Lading is no more a mere matter of form than who is the maker or payee of a Note. Important legal and commercial conse-

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*"It is my understanding that these warehouses are the agents of the railroad * * * the principal objection of our mills is the fact that through the association of one man acting as railroad agent, warehouse manager and banker, it reacts to the disadvantage of our mills principally due to the fact that our items that are sent through on arrival draft and our goods which are sold on arrival draft basis are not paid for in some cases for five or six months." (R. 256)

"As to whether our complaint is that the railroads take it or put it in storage instead of collecting the bill, our complaint is that they unload it without getting the bill of lading." (R. 259)

"I think this agency relation ought to be discontinued * * *. I am basing that opinion on shipments I have made." (R. 259)

"It would help solve our difficulty if this provision by which the railway company paid for the unloading or loading of flour, and the handling of the flour, should be cut off. The result would be that the consignee of the car or the man who shipped it would have to pay the handling charge himself. It is my idea then, that on 80 or 90 per cent. of the flour in Philadelphia the people who are dealers or the people who are the shippers ought to pay say 40 or 50 cents a ton for handling." (R. 260)

"The objection as I see it, on the part of the millers of the United States to this particular arrangement is * * * Second, that it, in effect, makes the goods shipped in the manner described by Mr. Knighton and Mr. Purchase subject to delivery to an agency of the railway company with which we have no privity of contract under the bill of lading or otherwise." (R. 264)

quences follow from the exercise of choice on the part of a person executing a Bill of Lading as to the persons to be named in that document as Consignor and Consignee. The difference in "form" between two Bills of Lading, one showing consignment to care of the contract warehouse, and another to a complaining warehouse, notify X, produces important differences in the substance of the commercial transaction. The contract warehouse has no right in the goods and no liability on the Bill of Lading. The complaining warehouse has both. It is needless to go into these rights and liabilities. Many of them are codified in the Bills of Lading Act. Section 42 of that Act, (U. S. Code, Title 49, Section 122), defines "Consignee" and "Consignor" as follows:

> "'Consignee' means the person named in the Bill as the person to whom delivery of the goods is to be made.
> "'Consignor' means the person named in the Bill as the person from whom the goods have been received for shipment".

See also—

Smokeless Fuel Co. vs. Norfolk and Western Railroad Company, 85 I. C. C. 395.

It is suggested by the Commission that the contract warehouses must be the Consignees because they "are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less than carload lots". (R. 148). Surely a person may be the consignee of goods which he is not physically prepared to accept. If a manufacturer has a carload of goods shipped to himself or his representative at team-track delivery, or at a station operated by the Railroad's own employees, and if that agent or that representative has a truckman call for the goods and deliver some of them

to the purchasers and the rest of them to a warehouse company, that manufacturer or his agent is in form and substance the Consignee. We fail to see how the legal aspect of the transaction is changed merely by shifting the place of delivery. The Commission's error in the reasoning quoted above is that it assumes what it wants to prove; it says that the warehouses are the parties to whom delivery of the goods is made. Delivery is made at the warehouse to the Consignee or on his order. It is, of course, well settled that delivery on the order of the Consignee satisfies the carrier's obligations. **City National Bank vs. El Paso and Northeastern Railroad Company, 262 U. S. 695,**

Utley vs. Lehigh Valley R. R. Co., 292 Pa. 251.

A carload of freight to two or more persons, each holding an order from the Consignee for part of the carload, is what is called a split delivery. That the carriers at their own stations may make split deliveries has been expressly recognized by the Commission, **(Loading and Unloading Carload Freight, 101 I. C. C. 394, 403).** There is then nothing inherently illegal about delivering a single carload of freight to two or more persons upon the order of a Consignee who is not prepared to accept the carload shipment, and if such a delivery can be made by the carriers' employees, it can, under the rule of the Arbuckle Case, be made by its contractual agent.

The real question, of course, is what is a reasonable rate to be charged for a carload of freight which receives a split delivery. The Commission recognizing this, has fixed a maximum charge for rendering such a service. (Loading and Unloading Carload Freight, Supra.) Such an issue would arise in this case if and when the carriers demanded compensation in addition to the freight rate which for the past forty years has included such deliveries in Philadelphia.

As we have pointed out the Commission's argument as to split deliveries completely overlooks the large number of cases where the delivery is made to the consignee or on an order covering the entire carload, and it ignores the outbound shipments which are made by the owner of the freight in his own name, yet the Commission's order does not ignore this traffic. The legality of the order depends upon the proposition that all traffic received at the warehouse is shipped to the warehouse, and that all traffic shipped from the warehouse is shipped by the warehouse.

To say that the owner of the warehouse, at which the consignee desires his goods to be delivered, is to be deemed the consignee, is a mere fiction. "Fortunately", as Judge Buffington so well says in his opinion, (R. 55) "in the interest of actual facts the giving of the name of consignee or consignor to such a warehouse does not make it such, if in truth and verity it was not the consignor or the consignee".

POINT V.

Payments made to the contract warehouses are not rebates.

The most unwarranted statement in this entire case is the holding that the payments to the contract warehouses are rebates. The reasoning of the Commission on this point is concentrated in two sentences:

> "It is fundamental that an unlawful discrimination practiced under authority of a tariff is just as evil as one which is practiced contrary to a tariff." (R. 149.)
>
> "The Record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. (R. 150.)"

The word "rebate" is used but once in the Interstate Commerce Act, and that is in Section 2. It is also used in the Elkins Act, U. S. Code, Title 49, Section 41, and signifies the gist of the offense under that criminal statute. The complaints in this case before the Commission charge that the payments are rebates under both of these provisions. (R. 115.)

Section 2 of the Interstate Commerce Act provides as follows (U. S. Code Title 49, page 1653):

> "If any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

Using the word rebate in the sense in which it is used in the Interstate Commerce Act (as distinguished from the Elkins Act) a finding that a rebate is paid, is a mere finding of a violation of Section 2. To say that there is unjust discrimination and a rebate is mere repetition. It sounds worse to call it a rebate than to call it unjust discrimination, but it means the same thing.

A rebate, as used in the Elkins Act, means a secret departure from the published tariff. It is a device where-

by property is "transported at a less rate than that named in the tariffs published and filed by such carrier." (Elkins Act, Section 1.) Now, the payments here in question, are all provided for in tariffs so that there can be no contention of a violation of the Elkins Act. It is quite true that "an unlawful discrimination practiced under authority of a tariff" is a violation of Section 2 of the Interstate Commerce Act, but it is not a violation of the Elkins Act. The use of the word rebate, therefore, merely confuses matters. It denotes a violation of Section 2, but it connotes secrecy, corruption, and underhandedness.

Any such suggestion is utterly unwarranted. If the Commission believed that there was a violation of the Elkins Act it would have instituted proceedings under that Act years ago. The published tariffs set out the whole arrangement. The system is well known to the entire shipping public of Philadelphia. Its origin, forty years ago has been noted. It originated as a cooperative venture of the shipping public and the railroads to permit the removal of the tracks from one of Philadelphia's principal streets. The usefulness of the arrangement from the carrier's point of view is entirely obvious. It secures prompt release of equipment, permits efficient use of crowded terminal facilities in the center of a great city and protects the freight in the carrier's custody against pilferage and damage. No corrupt motive for making the contracts is suggested. The Baltimore & Ohio contracts were originally made by receivers appointed by the Court. All of the contracts were taken over by the United States during the railroad administration and the payments thereunder were increased. No suggestion has ever been made that the payments are excessive in amount, and the complaint to the Commission contains no prayer under Section 15, paragraph 13 of the Act asking the Commission to fix a maximum allowance.

There is no showing that any part of the payments made to the warehouses have been passed on to any shipper, nor is there any showing of preference of one shipper over another. The arrangement is available to all shippers and all the shippers use it. Indeed, that is the very gist of the complainant's claim for damages. No shipper complains of the arrangement. On the contrary, even the shippers whom the complainants called, disavowed any objection to the system, (R. 242) and said that if arrangements could be made so that the slow buyers would pay their drafts promptly, they would consider it "a rather good arrangement." (R. 263.) As for the shipping public of Philadelphia, they have intervened through the trade organizations strongly to oppose its elimination.

The Commission's report may be scanned in vain for any suggestion that the system is injurious or is not beneficial to the shipping public. The Commission finds that even the complainants have failed to show that they have suffered actual pecuniary loss attributable directly to the alleged unlawful practices, (R. 150). Judge Buffington in the Court below points out the immense advantages of the arrangement to the public, and we think it a fair inference from the last paragraph of the majority opinion, (R. 43), that the majority considered the practice a technical rebate but not one which injures the public.

On this branch of the case, we point again to the close parallel between this case and the Peavey Case. In the Peavey Case, as here, the carriers entered into the arrangement for legitimate reasons of their own; indeed for the same considerations as influenced them here, to wit; to secure prompt release of equipment and in order to obtain competitive business. There "the railroad company in 1899 made a contract in good faith with Peavey under which he built an elevator." The contract provided the amount of his payment and later another elevator was

brought into the arrangement. In this case, the Merchants Warehouse was first built to perform the desired services and the arrangement was later extended to other warehouses. The good faith of the contract for unloading the flour and other package freight is equally apparent. In the Peavey Case, the Court considered it important to remark that in no case was any additional charge made to the shipper for the elevator service. In this case, no additional charge is made to the shipper for the service of unloading the flour. In that case, it was pointed out that the service of elevation was a transportation service as defined by the Act. The same definition includes the loading and unloading practiced here. There, the Commission held that there was a rebate because of the incidental advantages accruing to the elevator.

> "* * * the ground of the decision is that even an honest payment of the bare costs of elevating grain in transit gives an undue advantage if the elevator owner also owns the grain." (Interstate Commerce Commission vs. Diffenbaugh, 222 U. S. at page 46.

In this case, it is contended that an honest payment of the bare cost of unloading the freight gives an undue advantage to the warehouse company. And the holding of this Court that such payments were not rebates, should have been respected by the Commission here. There is, of course, one important difference between this case and the Peavey Case. In the Peavey Case, the payment was made to the **owner** of the grain. In this case, it is conceded that the warehouse companies do not own and have no beneficial interest in the freight. But, even if they were the owners or were to be deemed to be identified with the owners, still under the rule of the Peavey case, the payment to them of the cost of unloading is not per se unlawful.

POINT VI.

The contract warehouses are public freight stations.

The Commissioner found:

> "The facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not, in fact, public stations, but are confined to the handling of merchandise for the patrons of the warehouse" (R. 148).

If the phrase "confined to the handling of merchandise for the patrons of the warehouse" means that the use of the warehousing facilities is made a prerequisite for the use of the freight delivery facilities, such a statement is directly contrary to the uncontradicted evidence. As already mentioned, shippers of about 1000 cars a year, outbound, used the Merchants Warehouse Company as a freight station without using it for storage. Inasmuch as the warehouse company handles about 10,000 cars a year, both inbound and outbound, it appears that the 1000 cars which are handled without any warehousing is a substantial percentage of the outbound freight. Similarly, the proportion of inbound freight which was delivered directly to the consignee without storage, varied from 35% to 80% of the total (R. 310, 386, 401).

The patrons of the warehouse are the patrons of the railroad,—that is to say, the shipping public of Philadelphia. The extent to which they use the warehouses is indicated by the fact that 85% to 90% of the flour consumed at Philadelphia passes through the contract warehouses (R. 260).

But the important finding is that the carriers have denominated the contract warehouses as their stations.* The public has the right to use the stations whenever they please.

> "It is the right of the public to use the road's facilities and to demand service of it rather than the extent of its business, which is the real criterion determinative of its character." **(Tap Line Cases, 234 U. S. 1, 24).**

The public profession in the railroad tariffs makes them freight stations in law. The evidence shows that they are used by the public as freight stations in fact. The contract warehouses are both nominally and actually freight stations.

To quote again from the dissenting opinion of Judge Buffington in the Court below:

> "Indeed, as we sense this case, the decisive question is whether these warehouses were in good faith made public freight stations by the railroad and whether the warehouses have honestly and in good faith and reality acted as public freight stations in the receipt of outgoing and the delivery of incoming freight. That test was clearly pointed out and made the decisive factor in the Baltimore case (Terminal Warehouse Co. v. U. S., 31 Fed. (2d) 951). A study of that case shows that the warehouses were designated in the tariff sheets as public freight stations,

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*The Pennsylvania and the Baltimore and Ohio have so designated them in their tariffs filed with the Commission. The Reading took the view that publication in the tariff was not a necessary part of the inclusion of the warehouses in the station facilities which they adjoined, but expressed a willingness on brief so to publish the holding out in their tariffs if the Commission felt such was proper.

but in the proofs it was shown in that case, as Judge Soper says, 'that the terminal warehouses, though nominally open to the general public, are in fact confined to the receipt and forwarding of merchandise concerning which the Terminal is employed to render some warehouse service.' In other words, the railroads and warehouses in that case compelled the shipper to submit to the warehouse storage charges if he used the station. In the present case no such condition exists. The shipper simply ships and the warehouse simply receives and forwards the freight thus received without compelling any, or even contracting for any, precedent storage. In the present case any outbound shipper desiring storage or shipment, if he so desires, and any shipper not desiring warehouse facilities may use the warehouse simply as a freight station. * * *

We have already noted some of the facts in reference to the use of these warehouses as public freight stations and reference is further made to the fact that 35% at some of the contract warehouse stations and 75% at others were delivered to the actual consignees within the forty-eight hours of free time and were not warehoused at all. At the Pennsylvania Warehousing Stations from 40 to 60% of incoming freights were taken away without being stored, and at the Philadelphia Warehouse and Cold Storage Stations 80% were so taken. These warehouses being then in truth and in fact used by the public and the railroads as public freight stations, it seems to me that the Baltimore case is an authority in favor of the warehouses and not of the Interstate Commerce Commission." (R. 56-58)

POINT VII.

Assuming, arguendo, that a finding of unjust discrimination and undue prejudice under Sections 2 and 3 of the Interstate Commerce Act was valid, the order which was made exceeded the power of the Commission in that it went beyond a requirement that the carriers cease and desist from the violations of the Act.

For the purposes of the discussion which follows, we shall accept the fiction on which the complainants' case was based. If then it be conceived that both the contract warehouses and the complaining warehouses are shippers, it follows that the carriers must treat them both alike. A carrier which makes payments to the contract warehouses for unloading the freight must likewise pay a corresponding amount to the complaining warehouses for performing the same service.

Union Pacific R. R. Co. vs. Updike Grain Company, 222 U. S. 215.

That case grew out of the same arrangement as the Peavey case. The railroad company paid the Peavey Elevator an allowance, but refused to pay Updike a similar allowance for elevating his grain. Updike complained to the commission, and demanded reparation for the injury done to him by the undue prejudice practice by the railroad. The railroad contended that Updike and Peavey were not similarly circumstanced, but the commission found that they were, and awarded reparation. This Court sustained that award.

Following the rule of the Updike and Peavey Cases, and still assuming, *arguendo* that the contract and complaining warehouses are shippers, the Commission, having found the circumstances of the two shippers similar, should have issued an order requiring the railroad to cease and desist from the unjust discrimination practiced between them. The Commission had no right to make an

order which goes further than to direct the Carriers to obey the law which it administers.

When carriers violate Sections 2 and 3 of the Interstate Commerce Act, they may be required to cease and desist from such violation, but they must be left "free to remove the discrimination by any appropriate action."

United States vs. Pennsylvania R. R., 266 U. S. 191, 199;
American Express Co. vs. Caldwell, 244 U. S. 617;
Houston etc. Ry. vs. United States, 234 U. S. 342;
Central R. R. vs. United States, 257 U. S. 247.

See also

Great Northern R. R. Co. vs. Minnesota, 238 U. S. 340.

Ordinarily, as in this case, there are two methods of removing the discrimination. If one of these methods violates some other Section of the Act, then, of course, the Commission can require that the Section 2 and 3 violations be removed by the other method. That is the principle which the Commission purports to be following here. It says after finding that payments to one without payment to the other is unjust discrimination:

> "The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will, therefore, be required to cease and desist from publishing or making such discriminatory and preferential allowances." (R. 150)

The fallacy of the Commission's reasoning here is the assumption that the giving of a rebate violates some

provision of the Act other than Section 2. We have pointed out that these payments are not rebates within the meaning of the Elkins Act because they are published, and the Peavey Case is authority for the proposition that they are not illegal per se. The fallacy of the Commission's reasoning will become at once apparent if we substitute for the word, "rebate", the phrase, "unjust discrimination". The ultimate finding of the Commission then comes to this:

> The practice of defendants in making allowances to the contract warehouses and refusing to make similar allowances to complainants results in unjust discrimination. These allowances are nothing more than a device to attempt to lend legality to an unjust discrimination. Therefore, the unjust discrimination can lawfully be corrected only by terminating the allowances.

This difference between the Order which was made and the Order which would have been within the Commission's jurisdiction (assuming that the contract warehouses are shippers) is vital. To the appellant warehouses it is the difference between impairing the obligation and validity of a contract, and respecting it. To the appellant trade bodies, it is the difference between the curtailment of a valuable, long established and important transportation service and the continuation, not to say, the improvement of that service.

The Commission's order likewise exceeds the Commission's powers in that it requires the carriers to cancel their tariff provisions which make the facilities of the contract warehouses a part of the carriers' station facilities.

It will be remembered that the Pennsylvania Railroad and the Baltimore and Ohio Railroad published tariffs, providing in effect that the warehouse companies

are part of their station facilities. The Commission orders these provisions to be cancelled. This clause of the orders betrays the weakness of the Commission's contention that the contract warehouses are not public stations. The tariff publications are a public profession of willingness to serve the public at the points named, and if this public profession did not make those stations public stations there would be no need of cancelling the provisions. They would be a mere nullity. The train of reasoning runs like this,—

As long as the carriers publish tariffs stating that the contract warehouses are public stations, they are public stations. As long as they are public stations the carriers can undertake to load and unload freight there. As long as the carriers undertake to load and unload freight there, they can employ agents of their own choice to perform that duty, and as long as they employ agents they can pay them reasonable compensation. The only way of striking down the system, therefore, is to compel the carrier to cancel their tariff provisions making the contract warehouses public stations. The Commission, having determined to strike down the system, includes such a provision in its order.

The difficulty is that there is no clause of the Interstate Commerce Act which remotely suggests that the Commission has power to compel the carriers to give up freight stations which they are willing to maintain. Under some circumstances the carriers can be required to give additional service, or can be prohibited from discontinuing an existing service. This is the first case in our knowledge where a carrier has ever been prohibited from rendering a service which it is willing to render,—a service which it believes to be in its own interest as well as that of the public,—a valuable service of long standing on which the public of a great City has come to depend.

POINT VIII.

The court below had jurisdiction.

The Appellants are informed that the Commission may urge in this Court a point not urged in the Court below, to-wit, that the District Court of the United States for the Eastern District of Pennsylvania had no jurisdiction because of the fact that the carriers are not parties to the litigation.

Sprunt and Sons vs. United States, 281 U. S. 249.

In the present case the order of the Commission mentions the Appellant warehouses by name and orders the defendant carriers to break their contracts with the Appellant warehouses. This clearly gives the Appellant warehouses, "an independent legal right, * * * (which) was affected by the order which it was sought to set aside". (Sprunt and Sons vs. United States, Supra, at page 257.)

Reference is made to a foot note in the report of the case last mentioned wherein is pointed out the difference between the Sprunt Case and four earlier cases, in which jurisdiction was taken of suits to enjoin an order of the Commission by persons other than the carriers. In two of these cases, **(Interstate Commerce Commission vs. Diffenbaugh, Supra, and United States vs. Hubbard, 266 U. S. 474)** it is noted that rights arising under contracts with the railroads give the plaintiff a status to contest the legality of the orders. That is precisely the case with these appellant warehouses.

Sprunt was a shipper, not named in the Commission's order, who relied on rights alleged to arise under the Interstate Commerce Act. The rights of the appellant warehouse companies are not created by the Interstate Commerce Act, but independently thereof. No relief is asked by these appellants of the Interstate Com-

merce Commission. They contest and defend against an interference with their contract rights.

CONCLUSION.

In accordance with the foregoing it is respectfully submitted that the Order and Decree of the Court below should be reversed.

Respectfully submitted,

H. EDGAR BARNES,
ALLEN S. OLMSTED, 2ND,
Attorneys for Appellants.

JOHN W. DAVIS,
Of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1930. No. 641.

PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION AND REX & CO., INC., ET AL.

BRIEF FOR APPELLANT.

JOHN P. CONNELLY,
Attorney for Appellant,
1526-27 Land Title Bldg.,
Phila., Pa.

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BRIEF FOR APPELLANT.

OPINION OF THE COURT BELOW.

The opinion of the District Court of the United States for the Eastern District of Pennsylvania, is reported in Volume 44 FEDERAL REPORTER, Second Series, page 379 (Record 30).

STATEMENT OF THE CASE.

This is an Appeal by the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY from the decree of the District Court of the United States for the Eastern District of Pennsylvania, dismissing its Bill in Equity which prayed for an injunction to restrain the en-

forcement of a CEASE AND DESIST ORDER of the INTERSTATE COMMERCE COMMISSION issued on the Complaint of REX & COMPANY, INC., ET AL. against the READING COMPANY wherein they prayed that a certain contract between the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, and the READING COMPANY was unjustly discriminatory to the complainants, and was a device to pay rebates to the Appellant as a shipper of the merchandise loaded and unloaded by it into and from freight cars of said carrier.

A copy of the said Complaint will be found in the printed Record page 120.

The contract between PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY and the READING COMPANY was entered into November 4, 1898. This contract has been in force from that time up to the present time, a period of over thirty-three years.

A copy of the contract will be found in the printed Record, page 683.

A large amount of testimony was taken before the Examiner of the Interstate Commerce Commission who filed a report wherein he recommended a finding by the Commission that the contracts were discriminatory, and that the warehouse company, by reason of the dominion which it acquired in unloading and loading freight cars was to be deemed a shipper of the merchandise, and that the payment of an allowance for the services rendered was in effect the payment of a rebate.

On exceptions to this report being filed, Division 3 of the Interstate Commerce Commission sustained the report, a copy of which will be found (Record, page 142). In this report, PORTER, Commissioner, says at page 150:

> "Following McCORMICK WAREHOUSE CO. vs. PENNSYLVANIA R. CO., supra, and upon this record, we find that the practice of defendants in making allowances to the contract warehouses in connection

with the loading or unloading of package freight at Philadelphia as aforesaid, and refusing to make similar allowances to complainants for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will therefore be required to cease and desist from publishing or making such discriminatory and preferential allowances. The Pennsylvania and the Baltimore & Ohio will also be required to cancel their tariff provisions which make the facilities of the contract warehouses a part of the respective station facilities of these defendants at Philadelphia."

The Interstate Commerce Commission on December 28, 1929, issued its cease and desist order effective February 10, 1930 (Record page 151). Afterwards made effective February 25, 1930 (Record page 177), whereupon the appellant filed its bill in equity in the District Court of the United States for the Eastern District of Pennsylvania against the United States of America and the Interstate Commmerce Commission, wherein is prayed among other things that the Court should summon a Statutory Court in accordance with the provisions of the Act of Congress, approved October 22, 1913, 38 Statutes 220, U. S. Code Title 28, Section 47, and that the execution of said cease and desist order be stayed until the further order of the COURT (Record page 83).

On the presentation of said bill in equity to the Hon. J. Whitaker Thompson, Judge in said court he made an order dated February 17, 1930, that United States Circuit Judge Victor B. Woolley, and the United States District Judge,

William H. Kirkpatrick be called to his assistance to hear and determine said application for a temporary stay and ordered the hearing thereof before said Court on 21 day of February, 1930, at 10.00 o'clock at Philadelphia (Record page 841).

The Court by order made February 20, 1930, substituted the Honorable O. B. Dickinson, United States District Judge in place of the Honorable William H. Kirkpatrick. On February 21, 1930, the Court made an order fixing March 26, 1930, for hearing on the merits. On March 27, 1930, decree filed amending decree of February 17, 1930, by substituting the Honorable Joseph Buffington, Circuit Judge, in place of the Honorable Victor B. Woolley. The said cause was heard by the said Court on March 26, 27 and 28, 1930.

On April 15, 1930, decree filed continuing temporary stay of order of Interstate Commerce Commission. On October 8, 1930, the Court dismissed Appellant's Bill in Equity in an opinion by THOMPSON, J., concurred in by DICKINSON, J., BUFFINGTON, C. J., dissenting.

(Printed Record page 30).

On appellant's petition for appeal with supersedeas, the Court in a per curiam, filed November 19, 1930, granted such order fixing appeal bond in the sum of $2,000. which bond was entered and approved. The said appeal is now pending for hearing in this court.

ANALYSIS OF THE CONTRACT.

1. The Contract dated November 4, 1898, between the PHILADELPHIA & READING RAILROAD COMPANY and the PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY superseded the Contract dated June 2, 1891, between the PHILADELPHIA & READING COMPANY and the Warehouse Company.

2. The Railway Company agreed to bargain, sell and convey unto the Warehouse Company in fee simple, free of encumbrances, property at the Northwest Corner of Delaware Avenue and Noble Street, Philadelphia, reserving for the use or occupation of the Railway Company the platform and tracks now on said property. The Warehouse Company agreed to pay to the Railway Company the sum of $23,750.00.

3. The Warehouse Company was to commence within sixty (60) days from delivery of the Deed, to erect on the said lot at its own expense a brick building eight stories in height, of permanent character. The space below the second floor shall be twenty-one (21) feet clear above the level of the tracks of the Railway Company, and shall be occupied by the tracks and by the platform of the Railway Company; the other seven stories to be used by the Warehouse for the purpose of its own business.

4. The Building shall be supported by iron and steel columns, the first floor to remain open and appropriated for the tracks of the Railway Company and the platform, so constructed as to allow reasonable methods of access by the Warehouse Company for persons and property to the upper floors of the building, etc. etc.

5. Upon the delivery of the Deed from the Railway Company to the Warehouse, and upon the payment by the Railway Company to the Warehouse of the sum of $23,750.00, the Warehouse Company will convey unto the Railway Company the lot or piece of ground heretofore conveyed by the Railway Company to the Warehouse Company, reserving unto the Warehouse Company the right to maintain and operate for and during the term of 99 years from the 4th day of November, 1898, the new storage warehouse to be erected.

6. The Warehouse Company shall pay to the Railway Company during the continuance of the Contract for maintenance and operation of the new storage warehouse, the sum of $500 per annum from date of the completion of the Building, the payments to be made on the 4th day of November of each year. In addition shall pay and discharge all Taxes which shall be levied on the premises, or any improvements thereon, except the sum of $296.00, the rate of taxation now assessed upon the premises which shall be paid by the Railway Company.

7. The Warehouse Company to keep and maintain at its own expense the new storage warehouse in good condition, and to maintain at all times sufficient force, labor and appliances to promptly and expeditiously handle, receive and deliver merchandise to the full capacity of said storage house, and to load and unload all cars free of the expense to the Railway Company.

In case of the destruction of the Warehouse by fire or accident, the Warehouse Company shall not be obliged to rebuild the same unless it elects to do so, and shall notify the Railway Company of its election within ninety (90) days after said destruction, and in case it is rebuilt, the terms and conditions of the Contract to apply to the re-constructed warehouse.

8. The Warehouse Company to pay to the Railway Company when Merchandise shall be delivered by it to the Warehouse Company, weekly, all freights and charges, and until the charges are re-paid and until the same are collected from the actual consignees or owners, shall be entitled to the benefit of a lien on said Merchandise, and shall have the right and privilege to enforce the same in the name of the Railway Company, to the use of the Warehouse Company, and the Warehouse Company shall keep up policies of Insurance sufficient to cover all property delivered to the

Warehouse by the Railway Company during a period of two (2) days in respect to Merchandise requiring cold storage, and in other respects to store merchandise for a period of ten (10) days, and to apply the insurance money to the payment of claims for such loss or damage of merchandise.

9. The Contract not to be assigned without the written consent of the Railway Company.

10. The Contract to run for a period of 99 years, and at the end of the period of 99 years, the Warehouse Company shall have the option to lease the Warehouse for a further period of 99 years at a rental which shall be determined by mutual agreement, but Warehouse Company in the event of its exercising the option to continue for 99 years, to give six (6) months' Notice prior to the expiration of the first period of ninety-nine (99) years.

11. The Railway Company to deliver to the Warehouse Company for general storage and warehousing, all consignments of freight which it may find necessary or desirable to store in other than its own warehouse, and to deliver to it for cold storage and warehousing all consignments of Dairy and other products such as eggs, butter, cheese, poultry, etc. as can be controlled by it, and to make deliveries upon the tracks in the immediate vicinity of the platform of the Railway Company. Merchandise requiring cold storage shall be entitled to free storage for a period of two (2) days, and all other merchandise shall be entitled to free storage for a period of ten (10) days. The loading and unloading of cars at the Railway platform to be done by the Storage Company. The Railway Company appoints the *Storage Company its Agent and Warehouseman for such merchandise delivered by the Railway Company, such agency to extend only to the receipt, storage and delivery of consignments from Railway Company and to the collection of freight and charges thereon. The Agency shall not be taken to relieve*

the Warehouse Company from its liabilities as a Warehouseman, nor from Claims for loss or damage which may arise by reason of its own acts. In case the Warehouse Company shall not furnish room, the Railway Company to contract with others for such additional space.

12. The Railway Company to pay to the Warehouse Company as terminal allowance for facilities afforded and services rendered (that is to say for receiving, handling, free storage and insurance) the sum of 50¢ per Ton gross or net according to its classification, for every ton of merchandise requiring cold storage received from the Railway Company and stored by the Warehouse Company, and the sum of 30¢ per Ton for each and every ton of other merchandise not requiring cold storage. Payments of all amounts to the Warehouse Company shall be made by the Railway Company, before the 15th of each month, provided that the payments shall not be made by the Railway Company as to merchandise transported by it for which it only receives a switching or transfer service to or from other lines, or to and from other warehouses, in which case the Warehouse Company shall be at liberty to decline to receive such consignments.

This agreement is binding upon the respective Successors and Assigns, and is taken to supersede the Contract between the Warehouse Company and the PHILADELPHIA & READING RAILROAD COMPANY, which shall continue in effect so long as the Warehouse Company shall continue to maintain and operate the storage warehouse so to be erected, and that the Storage Warehouse shall make the Consignees or Consignors no higher charge for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being for similar services, by other Railroad Warehouses in the City of Philadelphia, unless the consent of the Railway Company to make higher charges shall first be given in writing.

(Printed Record pages 684 and 688)

There was a supplemental contract dated April 20, 1909 and it will be found in Printed Record page 678.

The Contract of November 14, 1898, was modified by letters between the parties to the contract dated September 28, 1914, September 30, 1914, and October 3, 1914, which provided for two days free storage instead of four days.

Printed Record pages 674, 675 and 676.

Clause Eleven of the Contract dated November 4, 1898, was modified by letter dated October 3rd, 1914, which increased the price for merchandise requiring cold storage from thirty five cents to sixty cents per ton and the rate of thirty cents per ton on merchandise not requiring cold storage remained unchanged. This is found in the Printed Record page 666.

STATEMENT OF QUESTION INVOLVED.

Are the payments which the READING COMPANY make to the PHILADELPHIA WAREHOUSING AND COLD STORAGE COMPANY, the Appellant herein, under a written contract for services rendered by the Appellant, and the facilities furnished by it, in violation of Sections 2 and 3 of the INTERSTATE COMMERCE ACT?

(Feb. 4, 1887, c. 104, Sec. 2, 24 Stat. 379.
Feb. 28, 1920, c. 91, Sec. 404, 41 Stat. 479)
Code of Laws of the United States Volume 44, part 1, pages 1653 and 1654.

SPECIFICATIONS OF ERROR.

FIRST:

The Court erred in finding and holding that the services rendered by the Appellant under its contract is a trade service and not a transportation service.

(18) (Printed Record page 62)

SECOND:

The Court erred in dismissing the Petition in Equity as filed by the Appellant as this was a Special Contract of Agency.

ARGUMENT.

SUMMARY OF ARGUMENT.

FIRST:

This is a special contract creating an agency for transportation services.

SECOND:

The majority and minority opinion of the lower court did not consider this agency feature of the contract which distinguishes it from a general warehouse.

THIRD:

The Railroad Company had the right to select its own agencies and to pay for the facilities as furnished.

FIRST: The Appellant performs a "special" service under a written contract. It operates a cold storage company, and after the "free time" a new duty devolves upon the Appellant as a Warehouseman in the conduct of its business.

The Appellant is not a general storage house in the same sense as the other Appellants.

The Contract is specific in its character and this is shown with reference to Paragraph 10 of the Contract, (Record page 687) for there is a direct reference to consignments of Dairy and other Products, such as eggs, butter, cheese, poultry, etc.

The Interstate Commerce Commission and the Court below did not attempt to differentiate between the various

warehouses, and the different relations that each have with the other. There is a difference.

The terminal charge is 50 cents per ton on Dairy Products, and 30 cents per ton on General Merchandise. About 99% represents Dairy Products.

The charge covers all duties to be performed including 48 hours free storage and insurance, and if the goods are not removed at the expiration of the 48 hours, free time, they automatically go on storage at the regular storage rates.

The Appellant handles on an average of 3600 cars per year. The freight handled by the Appellant belongs to the parties to whom they are shipped as shown by the freight bills furnished by the Railroad Company to the Storage Company, and the Storage Company collects from the Consignee for their account after arrival notice, and this collection is made by the Storage Company as the Agent of the Railroad and accounted to the Railroad Company.

All the Dairy Products originating on lines using the Railroad Company, Philadelphia delivery, are taken care of by the Storage Company, unless otherwise specified by the Shipper, or the Consignee as provided for in the Contract.

For the Fiscal Year of the Storage Company ending March 31, 1926, the Railroad Company paid to the Appellant, $19,727.39.

For the Fiscal Year of the Storage Company ending March 31, 1927, the Railroad Company paid to the Appellant, $21,908.18.

For the Fiscal Year of the Storage Company ending March 31, 1928, the Railroad Company paid to the Appellant $20,992.42.

The exact number of cars from April 1926, to March 1928, delivered to the Storage Company by the Reading Company amounted to 7,379.

(Printed Record pages 309, 310 and 311.)

The Appellant has no interest whatsoever in the Dairy and Food Products or the General Merchandise except as the Agent of the Railroad Company and acting under its direction.

The Appellant has no legal or equitable interest in any of these goods.

After the free time when they are put in storage, they are held for and on account of the persons to whom they legally or equitably belong, subject only to the storage charges of the Appellant.

The Appellant has no control or direction over the shipment of goods as delivered to it, and it lends its facilities to the Railroad Company, and these facilities are only used by the Railroad Company when the merchandise whatever it may be, is delivered by the Railroad Company to it. Without these facilities the Railroad Company would have to provide a storage house with refrigerating equipment, for the care and maintenance of its merchandise, dairy and perishable food products.

The Railroad Company has no interest directly or indirectly in the Appellant's warehouse.

(Printed Record page 423.)

The Appellant's place of business is located at the main terminal of the Reading Company, Philadelphia, and one of its warehouses is built over the tracks of the Reading Company, and the Railroad Company because of the proximity of the warehouse, uses the facilities of the Appellant for terminal purposes.

The Appellant was in existence long before any of the storage houses of the Complainants and the fact that the Railroad Company uses the facilities of the Appellant for the convenience of its customers, is the best answer that can be made to the Complainants, for if it were not a matter of convenience to the Railroad Company and its customers, this would have long since ceased.

The facilities afforded by the Appellant to the Railroad Company saves the Railroad Company from being put to enormous expense in proving for a warehouse, and the capital expenditure required for such a plant, with its fixed charges, its maintenance and upkeep.

Can it be said that under these circumstances the Appellees or any one else is justified in saying that the Railroad Company was discriminating because they did not employ fifty men (50) when twenty-five (25) would do the work; or can it be said that the Appellee or the Complainants would have the right to say that the Railroad Company in enlarging its yards would be obliged to take property not necessary for its use because there was property immediately adjoining the Railroad?

This is an important act for the benefit of the Railroad. It has no basis of discrimination because it is simply paying an ordinary charge for services performed.

There is no refund by the Railroad Company to the Appellant, no rebate, no drawback.

The Appellant only receives the amount of money as specified in its contract from the Railroad as its agent and for the services it renders and the facilities it furnishes.

The Appellant is obliged to keep its property in first class condition and paragraph 7 of the Contract specifically says what it is obliged to do.

(Printed Record page 686.)

The financial responsibility of keeping its property in first class order and condition is on the Appellant and without any contribution directly or indirectly from the Railroad Company; it is obliged under the terms of this contract at all times to maintain sufficient force, labor and appliances to promptly and expenditiously handle merchandise to the full capacity of the Storage House.

The INDUSTRIAL COLD STORAGE AND WAREHOUSE COMPANY was one of the Complainants in the case before the Interstate Commerce Commission. Its place of business is located at 1905 N. American Street, Philadelphia, and it is served by the Reading Company. It was organized long after the contract entered into between the Appellant and the Railroad Company and its place of business is removed some considerable distance from that of the Appellant.

(Printed Record pages 234, 235 and 236.)

This Company was the only complainant so far as the Appellant was concerned, and it is respectfully submitted that under the circumstances of this case the contract existing between the Appellant and the Railroad Company and its place of terminal and its existence as a Company long prior to that of the Industrial Cold Storage Company must be given consideration for the basis of the contract was the proximity to the trade, the convenience to the parties, and the facilities afforded to the Railroad Company, and the obligation under which the Appellant performs its services, equips its buildings and maintains and operates the same as well as the financial burdens imposed thereon.

The contention of the Appellant therefore is that there is no violation of Sections 2 and 3 of the INTERSTATE COMMERCE ACT (February 4, 1887, c. 104, Sec. 2, 24 Stat. 379, February 28, 1920, c. 91, Sec. 404, 41 Statute 479) for the reason that there is no special rate, rebate, drawback or other device, charge or demand collected or received by the Appellant other than the amounts stipulated specifically in the contract between it and the Railroad Company.

These words as defined in Section 2 have a well defined meaning and need no explanation.

SECOND: The Appellant filed a petition in Equity in this case in the court below praying for an injunction, which petition was dismissed. The lower court in both the majority and minority opinion did not give any special consideration to the position as taken by the Appellant. A reference to the opinion of the Court below will show a discussion of the general features of the case, but without any reference to the position of the Appellant by reason of the special contract of agency, and the facilities as furnished. It is most earnestly contended that this special feature of the contract of agency and the facilities as furnished by the Appellant and the contract, deserves very serious consideration by reason of the duties imposed by the Appellant under the terms of the written contract with the Railway Company.

The opinion of the Lower Court: (Printed Record page 30.)

THIRD: The Appellant operated with the Railroad Company, under a written contract. It was a contract of agency and the Appellant was obliged to do and perform certain services for the benefit of the Railroad as specifically defined in the Contract. The duties of the Appellant have been set forth in part 1 of this Argument, and they need not be again discussed.

The INTERSTATE COMMERCE Commission and the Court below gave great consideration to the case of

TERMINAL WAREHOUSE OF BALTIMORE vs. UNITED STATES et al 41 Federal Reporter Second Edition page 951

and this case is relied on by the Appellees.

The case is distinguished from the present case for the following reasons:

1. The McCORMICK case was decided upon the theory of a "general warehouse" as distinguished from the case under consideration, which is a Cold Storage Company, and which operates under a "special contract".

2. Because the Consignor and Consignee have no relation to the Storage Company.

3. Because the Storage Company has no dominion over the goods.

4. Because the Storage Company is paid for the services it renders as the Agent of the Railroad under a written contract, and the Storage Company does not receive a "rebate" from the Railroad.

5. Because after the "free time" a new duty devolves on the Storage Company to protect the goods delivered to it as a cold storage house, and to be paid as a warehouseman.

It has been well settled that a railroad carrier may exercise its own discretion in the selection of its agents and employees to perform any part of its transportation service; that the mere granting of privileges which are incidentally a part of the compensation for which services are rendered is not unlawful as preferential or discriminatory as against others who are not thus selected.

DELAWARE LACKAWANNA & WESTERN R. R. CO. vs. MORRISTOWN, 276 U. S. 182;
DONOVAN vs. PENNSYLVANIA Co., 199 U. S. 279;
GREAT NORTHERN RY. CO. vs. MINNESOTA, 238 U. S. 340;
EXPRESS CASES, 117 U. S. 1;
CHICAGO, ST. L. & N. O. R. R. CO. vs. PULLMAN CAR CO., 139 U. S. 79;

BLACK AND WHITE TAXICAB CO. vs. BROWN AND YELLOW TAXICAB CO., 276 U. S. 518.

The Appellant contends that under this special form of contract, the facilities as furnished by it, and the cases above quoted sustain the position of the Railroad Company in entering into this form of contract of agency.

The many questions raised in this case have been discussed by the Brief filed by the other Appellants, and it would only be taken up the time of the Court in repeating the Argument, and the discussion of the cases and for that reason these questions have not been discussed in this Brief.

It is therefore respectfully submitted that the judgment of the District Court of the United States for the Eastern District of Pennsylvania in dismissing the petition in equity in this case should be reversed.

JOHN P. CONNELLY,
Attorney for Philadelphia Warehousing & Cold Storage Company,
1526-27 Land Title Building,
Philadelphia, Penna.

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IN THE

SUPREME COURT OF THE UNITED STATES.

Nos. 635, 636, 638, 639, 641, 642, 637, 640, 643—October Term, 1930.

Merchants Warehouse Company, *Appellant*,

635 vs.

United States, et al., Appellees.

Also related cases under dockets 636, 638, 639, 641, and 642, as stated more in detail at pages 1 and 2 herein.

United States, et al., *Appellants*,

637 vs.

Merchants Warehouse Company, et al., *Appellees*.

Also related cases under dockets 640 and 643, as stated more in detail at pages 1 and 2 herein.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Brief of

JAMES GALLAGHER,
NORTHEASTERN WAREHOUSE COMPANY,
WALTER A. BAILEY,
TERMINAL WAREHOUSE COMPANY,
REX & COMPANY, Inc.
INDUSTRIAL COLD STORAGE AND WAREHOUSE COMPANY,

Appellees in Nos. 635, 636, 638, 639, 641 and 642.
Appellants in Nos. 637, 640 and 643.

JOHN J. HICKEY,
Counsel for James Gallagher, et al.

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IN THE

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Nos. 635, 636, 638, 639, 641, 642, 637, 640, 643—October Term, 1930.

Merchants Warehouse Company, *Appellant*,

635

vs.

The United States of America, Interstate Commerce Commission, and James Gallagher, et al.

Merchants Warehouse Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., *Appellants*,

636

vs.

The United States of America, Interstate Commerce Commission, and James Gallagher, et al.

The Pennsylvania Warehousing and Safe Deposit Company, *Appellant*,

638

vs.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al.

The Pennsylvania Warehousing and Safe Deposit Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., *Appellants*,

639

vs.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al.

The Philadelphia Warehousing & Cold Storage Company, *Appellant*,

641

vs.

The United States of America, Interstate Commerce Commission, and Rex & Company, Inc., et al.

Philadelphia Warehousing & Cold Storage Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., *Appellants*,

642

vs.

The United States of America, Interstate Commerce Commission, and Rex & Company, Inc., et al.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al., *Cross-Appellants*,

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Merchants Warehouse Company, et al.

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The Pennsylvania Warehousing & Safe Deposit Company, et al.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al., *Cross-Appellants*,

643 vs.

The Philadelphia Warehousing & Cold Storage Company, et al.

BRIEF OF JAMES GALLAGHER, ET AL.,

Appellees in Nos. 635, 636, 638, 639, 641 and 642.

Appellants in Nos. 637, 640 and 643.

THE APPEAL AND CROSS-APPEAL ARE ARGUED HEREIN.

This is the brief of the warehouse companies that were damaged by the rebates. We argue the appeal and cross-appeal in this brief. Par 11 of our brief is directed to the cross-appeal and all other parts are directed to the appeal.

In the cases on appeal we are appellees and in the cross-appeals we are appellants. To avoid confusion in the use of the terms appellants and appellees we refer to the warehouse companies that received the rebates or subsidies as the contract warehouse companies and to ourselves as the non-contract competitors.

REFERENCES TO OPINIONS DELIVERED IN THE COURT BELOW.

The opinion of the specially constituted District Court (R. 30) is reported at 44 F. (2d) 379.

The report and order of the Interstate Commerce Commission, (R. 142) appears as *Gallagher et al.* v. *Pennsylvania R. Co.*, 160 I. C. C. 563.

THE QUESTIONS PRESENTED.

Is the Commission's order (R. 142) void because it does not have substantial support of evidence? Is that order invalid in that it restrains three carriers from giving certain allowances. Is that order invalid because it requires the three carriers to cancel certain provisions of their filed and published tariffs?

The Commission's order (R. 151) requires the Pennsylvania Railroad Company, the Baltimore and Ohio Railroad Company and the Reading Company to cease, desist, and abstain from publishing and making allowances, out of their freight rates, to the respective contract warehouse companies in connection with the loading or unloading of package freight at Philadelphia, Pa. In short the order requires those common carriers to discontinue unlawful rebating.

Our position is that the Commission's order is lawful and valid. We submit that the judgment of the Court below condemning the substantive offense should be affirmed, and that the order of that Court granting a temporary stay of the order of the Commission should be reversed. We are in complete agreement with the United States and the Interstate Commerce Commission on all issues in these cases.

STATUTES INVOLVED.

(a) *Statutes Relied Upon.*

We rely upon the following statutes:

Section 2 of the Interstate Commerce Act, U. S. Code, Title 49, Section 2—

> "2. *Special rates and rebates prohibited.* If any common carrier subject to the provisions of this chapter shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this chapter, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is prohibited and declared to be unlawful."

Section 3 (1) of the Interstate Commerce Act, U. S. Code, Title 49, Section 3 (1)—

> "Section 3, par. (1) *Undue preferences or prejudices prohibited.* It shall be unlawful for any common carrier subject to the provisions of this chapter to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

Pertinent provisions of Section 3 of the Elkins Act, U. S. Code, Title 49, Section 43—

"Whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the district court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law . . ."

(b) *Statutes having an important bearing.*

Pertinent provisions of Section 1 of the Elkins Act, U. S. Code, Title 49, Section 41—

". . . and it shall be unlawful for any person, persons or corporation to offer, grant or give or to solicit, accept or receive any rebate, concession or discrimination in respect to the transportation of any

property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, . . . or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall knowingly offer grant or give, or solicit, accept or receive any such rebates, concession or discrimination shall be deemed guilty of a misdemeanor . . ."

"In construing and enforcing the provisions of this section, the act, omission or failure of any officer, agent or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person . . ."

The rules of practice require that we quote the relevant parts of statutes which are deemed to have an important bearing and, therefore, more especially in support of our cross appeals, we have quoted certain provisions of the Elkins Act.

STATEMENT OF THE CASE.

Our opponents have stated the proceedings before the Interstate Commerce Commission, the review and opinion of the statutory court, and the docketing of the cases in this Court.

In the cases presented on the formal docket of the Interstate Commerce Commission, which were instituted by three formal complaints, there were six complainants, who operated 18 warehouses, four competitors who operated 22 warehouses and three defendant common carriers. The names of these parties are shown in the following table.

Commission's Docket No.	*Complainants*		*Competitors*		*Defendants*
		(a)		(a)	
20968	James Gallagher	3	Merchants Warehouse Company	10	Pennsylvania Railroad Company
	Northeastern Warehouse Company	1	Quaker City Cold Storage Company	1	
	Walter A. Bailey	2			
	Terminal Warehouse Company	9			
20968 Sub. 1	Walter A. Bailey Terminal Warehouse Company		Pennsylvania Warehousing and Safe Deposit Company		Baltimore and Ohio Railroad Company
20968 Sub. 2	Rex & Company, Inc.	2	Pennsylvania Warehousing and Safe Deposit Company	10	Reading Company
	James Gallagher Northeastern Warehouse Company		Philadelphia Warehousing and Cold Storage Company	1	
	Walter A. Bailey Terminal Warehouse Co.				
	Industrial Cold Storage and Warehouse Company	1			

(a) Indicates the number of warehouses operated by the complainants and competitors. (R. 570, 471.)

Three of the four competitors named above, the companies that received the rebates, are the appellants in the cases Nos. 635, 636, 638, 639, 641 and 642, and the appellees in the cross-appeals, Nos. 637, 640 and 643. One of the competitors, the Quaker City Cold Storage Company, was not a party to the proceedings in the Court below and is not a party to the cases in this Court. The complainants named above are the appellees in Nos. 635, 636, 638, 639, 641 and 642 and appellants in the cross-appeals. The defendant carriers named above have not participated in the proceeding before the Court below or in this Court.

In the three complaints, filed with the Interstate Commerce Commission, the complainants alleged that the defendant carriers gave allowances, out of their freight rates, and thereby subsidized the competing warehouse companies subjecting the complainants to unjust discrimination in violation of Section 2 of the Interstate Commerce Act, and, further, gave undue and unreasonable preference and advantage to the contract warehouse companies and subjected the complainants to undue and unreasonable prejudice and disadvantage in violation of section 3 of that Act.

The contract warehouse companies and their non-contract competitors were engaged in the warehouse business, general warehousing, at Philadelphia, Pa. The warehouses which they operated were served by private side tracks connecting with the railway lines of the defendant carriers. The contract warehouse companies and their non-contract competitors each competed with the other in inducing manufacturers and wholesalers located at points outside Philadelphia and various concerns located in Philadelphia to ship goods in carloads over the railway lines of the defendant carriers to the warehouses in Philadelphia to be handled, distributed in small lots and stored in their warehouses. The revenue and income of the warehouse companies was derived from that warehousing of goods. The cost of service

to the patrons of the warehouses was the freight rates plus warehouse service charges and the aggregate of the freight rates and warehouse charges was the controlling consideration which caused such patrons to patronize one warehouse company and refuse to deal with a competing warehouse company. The allowances enabled the contract warehouse companies to quote lower charges in the aggregate and thereby underbid their non-contract competitors, subjecting the latter either to loss of business when they were underbid or to diminution of normal business profits and revenues when they were forced to reduce their normal warehouse rates and charges to meet that unfair competition. That is the substance or effect of the unjust discrimination and undue prejudice alleged and proved.

The allowances were specified in certain contracts or agreements in writing between the defendant carriers and the contract warehouse companies which receive attention in detail below.

The Commission, in its report, found that the non-contract competitors proved the allegations of substance in their complaints. The Court below, upon reviewing the Commission's report and the record, sustained the Commission's order and made certain findings of fact supplemented by conclusions of law (R. 58) as follows:

FINDINGS OF FACT

"1. The plaintiff warehouses and the complainants before the Commission, who are intervening defendants in this proceeding, operate at Philadelphia warehouses, at and from which they ship and receive, load, unload, store, distribute, and deliver in small quantities carload lots of merchandise, known as 'package freight', carried or to be carried at carload rates, which they have previously solicited for such handling from their customers located generally in cities outside of

Pennsylvania. For those services they collect from their customers certain warehouse rates and charges.

"2. In all the larger cities, including Philadelphia, public warehouses are customarily used for the receipt, storage, and distribution of merchandise. These warehouses perform an important public service. The merchandise warehouse receives goods in carloads and distributes them in smaller quantities to local jobbers or retailers, or re-ships them in less-than-carload lots to near-by destinations; issues negotiable and non-negotiable receipts, provides insurance, and allows credit to be obtained on merchandise stored; provides recoopering, marking, and separation of varieties, and various incidental clerical services. Warehouse services enable manufacturers to keep spot stocks for their customers; equalize production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space; reduce freight charges and save time in transit through handling goods in carload quantities; reduce fire risk and loss and damage claims; and eliminate the necessity of providing storage space at point of origin.

"3. The plaintiffs in the instant case operate, in competition with the interveners, who were complainants before the Commission, the same type of warehouses and render the same kind of services generally as the intervenors, for which charges are collected from their customers.

"4. The carriers, the Pennsylvania Railroad Company, the Baltimore and Ohio Railroad Company, and the Reading Company, pay to the plaintiffs, in connection with the loading, unloading, and 'handling' by them of such merchandise, certain sums, ranging from 30¢ to 50¢ per ton, but make no such payments to the warehouses which were complainants before the Commission. No payments are made if the shipments are unloaded within the forty-eight hours free time. The Pennsylvania Railroad Company pays the allowances in question to the Merchants Warehouse Company and

the Quaker City Cold Storage Company, the Baltimore and Ohio to the Pennsylvania Warehousing and Safe Deposit Company, and the Reading Company to the Philadelphia Warehousing and Cold Storage Company, the plaintiffs here. Payments are also made by the Reading to the Pennsylvania Warehousing and Safe Deposit Company.

"5. In some instances, the carriers own the land or warehouses which the plaintiffs hold under lease. In other instances, the carriers do not own the land or the warehouses.

"6. The contracts provide that the warehouse shall accord to traffic passing over the lines of the carrier preference in facilities furnished by the warehouse over traffic passing over other lines; shall load or unload or handle freight received to be shipped over the lines of the carrier, or received by the warehouse from the carrier for delivery to consignees; shall notify the consignees of the arrival of incoming freight; shall be responsible for the prompt collection of freight charges and other charges upon in-bound freight; shall indemnify and hold harmless the carrier for all damage to and all loss of freight in the custody of the warehouse; shall maintain fire insurance; shall notify the carrier of the failure of consignees to receive freight; shall comply with directions with respect thereto received from the carrier; shall indemnify the carrier against liability on account of any of the warehouses' acts of omission and on account of bills for merchandise issued by the warehouse.

"7. The terminal services of the contract warehouses include the removing and recording of the seals from the cars placed for unloading, placing seals on loaded cars and preserving the record thereof, examining the merchandise, noting the damage and the cause thereof, the prompt inspection of the equipment, prompt loading and unloading to minimize delay, storing the shipment for the forty-eight hours free time, including protection against fire through insur-

ance, taking up bills of lading and canceling the same, delivering the merchandise to the consignee and taking receipts therefor, handling claims for damage, disposal of refused merchandise, executing bills of lading for outbound shipments, tallying the contents of the cars.

"8. The contract warehouses and the intervening warehouses are engaged in the same kind of business, and each ships and receives at its warehouses package freight of all kinds destined to or shipped from various points in the United States over the railroads, and the circumstances and conditions surrounding handling and movement of the traffic are similar if not identical.

"9. The services which the contract warehouses perform, for which the contracts provide for the payment of compensation by the carrier to them, are performed, for their patrons, by the intervening defendants who were complainants before the Commission; the latter load and unload the freight for their patrons, pay and collect freight charges, send notices of arrival to their customers, check the contents of the cars, give the railroads reports, notify the railroads of damage to the freight, prepare bills of lading, mark and stencil packages, recooper and perform in general identical services for their patrons.

"10. The warehouses of the plaintiffs and those of the intervenors are served by private side tracks or sidings connecting with the lines of one or more defendants.

"11. Both handle the same classes of freight and both obtain business by widespread advertising in prominent trade publications by sending letters pamphlets, and circulars to prospective customers offering them their services, and by personal solicitation.

"12. There is active and keen competition between complainants and the contract warehouses.

"13. Concerns using public warehouse facilities generally select the company offering them the lowest aggregate charge for the distribution of their goods.

By means of the allowances the contract warehouses are able to quote lower charges than can the intervenors.

"14. The contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question.

"15. Traffic considerations have been the primary motive for the payment of these allowances.

"16. The facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact open public stations, but are confined to the handling of merchandise for the patrons of the warehouses.

"17. The services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are in fact performed for the benefit of the owner of the merchandise rather than for the railroads.

"18. The service rendered by the warehouses under the contracts is a trade service and not transportation service.

"19. While the contract warehouses are not the owners of the goods received or shipped by them, all of the dealings are with these warehouse companies, and none with the owners of the goods.

"20. As to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots.

"21. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or con-

signees of shipments to their warehouses. The same is true as to the intervening warehouses, shipments from and to their warehouses being handled in substantially the same manner.

"22. The Pennsylvania Railroad and the Baltimore and Ohio Railroad have made provisions in their tariffs by which they take upon themselves the service to consignors and consignees of loading and unloading carload package freight carried at railroad rates.

"23. Rule 27 of the Official Consolidated Freight Classification, to which the carriers are parties, provides as follows:

> "Section 1. Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings."

"24. The Pennsylvania Railroad and the Baltimore and Ohio Railroad provide in their tariffs by exceptions to Rule 27 that they agree to load or unload carload package freight at certain Philedalphia freight stations, included among which are the contract warehouses.

"25. The Reading Company has no such tariff provisions.

"26. The practice of plaintiffs in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid and refusing to make similar allowances to intervenors for performing similar services results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants.

"27. These contracts for the payment of the allowances are devices to attempt to lend legality to the payment of rebates to the contract warehouses."

CONCLUSIONS OF LAW.

"1. The payment of the allowances by the railroads in accordance with the contracts, is unlawful in that it subjects the intervening warehouses to unjust discrimination as against the contract warehouses.

"2. The payment of the said allowances gives an undue and unreasonable preference and advantage to the contract warehouses and subjects the intervening warehouses to an undue and unreasonable prejudice and disadvantage.

"3. The allowances paid to the contract warehouses are unlawful as rebates.

"4. The order of the Interstate Commerce Commission of September 28, 1929, is in all respects a lawful order.

"5. The petitions should be dismissed."

SUMMARY OF THE PRINCIPAL POINTS ARGUED.

1. The Commission's order has substantial support of evidence and, therefore, should be sustained.

2. The warehouse concerns, both contract and non-contract, are persons within the meaning of the words "any person" in sections 2 and 3 of the Interstate Commerce Act. The non-shipper argument of our opponents has no support of the statute or substance.

3. The rebates were exceptionally injurious to the business of the non-contract competitors.

4. The allowances are not compensation for service and are not rent for the use of facilities. They are, both in form and substance, traffic buying rebates or subsidies.

5. The contract warehouse companies did not perform any service for the carriers giving the allowances and those warehouse companies did not devote the use of any of their facilities to the public service of the carriers.

6. The use of facilities of the contract warehouse companies and the services performed by those companies were devoted exclusively to the private business activities of the contract warehouse companies and resulted to the sole benefit and profit of those companies and such use and services were trade activities not lawfully includible in common carrier duty or service.

7. The contracts, which our opponents rely upon, are unlawful and corrupt agreements through which the carriers bought the large freight traffic of the contract warehouse companies by giving unlawful rebates. That is, the carriers gave the rebates solely for the purpose of unduly influencing the routing of that traffic over their railway lines.

8. The writings in the filed and published railroad tariffs, relied upon by our opponents, are components of the unlawful schemes and devices used by the carriers to buy the traffic by the means of unlawful rebates.

Our opponents argue that the fundamental facts are undisputed and that there is no evidence that impugns the good faith of parties to the contracts. We cannot concur in those statements because there is sharp disagreement on the fundamental facts and in our formal complaints and throughout the proceedings we asserted bad faith and wilful unlawful conduct. Our opponents assert use of their facilities by the railroads and performance, by the contract warehouse companies, of service for the carriers in justification of the allowances. It seems to us that our opponents base their proof largely, if not wholly, on

writings in contracts and railroad tariffs. We, in opposition, insist that the writings are insufficient and that there is no evidence of actual use of the facilities or actual performance of the services in common carrier service.

These cases present the well-known railroad rebate attended by the traditional devices intended to conceal and disguise it which compel us to argue the cases at length.

In *Vandalia R. R. Co.* v. *United States,* 226 Fed. 713, 716, (C. C. A. Seventh Circuit) the Court said:

> "The history of this legislation demonstrates that both discriminations and rebates have ever been sought to be hidden under the most subtle disguises. Every device that seeks to cover up either a rebate or a discrimination in interstate commerce is denounced by the statute." . . .

ARGUMENT.

1. The Commission's Order has substantial support of evidence and, therefore, should be sustained by this Court.

In cases where the Commission's order has substantial support of evidence the Courts will not weigh the evidence further or consider the wisdom of the Commission's action. *C. R. I. & P. Ry. Co.* v. *United States,* 274 U. S. 29, 33, 34; *Virginian Ry. Co.* v. *United States,* 272 U. S. 658, 663; *The New England Division Case,* 261 U. S. 184, 203; *Seaboard Air Line Ry. Co.* v. *United States,* 254 U. S. 57, 62. The Commission's report is supported by an abundance of evidence, part of which is reviewed herein.

Whether a practice is unjustly discriminatory or preferential is a question of fact entrusted exclusively by the

Act to the Commission for determination upon the evidence in a particular case. *I. C. C.* v. *Alabama Midland Ry. Co.*, 168 U. S. 144; *Nashville Ry.* v. *Tennessee*, 262 U. S. 318.

2. Each of the warehouse concerns is a person, within the meaning of the words "any person", as used in sections 2 and 3 of the Interstate Commerce Act, and each of them, is a shipper.

Our opponents contend that the warehouse companies are not shippers. That argument challenges jurisdiction and evidently means that the complaining warehousemen, not being shippers, have no statutory right of action and being outside the purview of the Interstate Commerce Act, are outlaws. Also that the warehouse companies that received the rebates, not being shippers, together with the carriers that gave the rebates, are immune from application of the two statutes that inhibit the giving of rebates. This is a formidable claim of immunity.

(a) *The claim of immunity is without foundation.*

Shipments of freight handled by the warehouses at Philadelphia are billed to a person nominated by the owner of the freight "in care of" the warehouse company. The contention of the opposition, as we understand it, is that the care-of party is not the consignor or consignee and, therefore, is not the shipper. Our view is that the care-of party may be, and in the cases in hand is, the shipper and that underlying substance rather than writings on billing is controlling. The courts and the Commission evidently have not announced an all-embracing meaning of the word shipper. The meaning of that word, like the meaning of scholar and farmer, may be debated at length. The oppo-

sition briefs do not take a definite position as to the meaning of the word shipper.

The word shipper does not appear in sections 2 and 3 of the Interstate Commerce Act, the most pertinent statutory sections here, and in lieu thereof the words "any person" appear in those sections. Sections 8 and 9 of that Act, which deal with liability and means for relief, also evince avoidance of the use of the elusive word shipper and, in lieu of that word, show significant use of the words "person" and "any person".

A group composed of several persons, including a buyer, banker, truckman, warehouseman, trust company and broker or sales agent, may take concerted action which will result in the transportation of freight by railroad. It may be that the names of only two members of the shipping group of ten persons will be entered on bills of lading or railroad billing. But rebates given to any one of the eight persons in the shipping group, whose names do not appear on the billing, would be as injurious to competing shippers and shipping groups as rebates given to the two members named on the bills of lading as consignor or consignee of the shipments.

Under Section 1 of the Elkins Act the test of unlawful conduct is not applied to the person receiving the rebate. The test is—did the carrier give a rebate to any person and, if so, did the giving of the rebate defeat the carrier's published rates or inflict discrimination, etc. Likewise, under Section 2 of the Interstate Commerce Act, rebates are unlawful if given to any person and the unlawful character of the rebate is ascertained from the effect of the giving and not by the question—to whom was the rebate given. Rebates are unlawful whenever they have the forbidden effect whether given to a person named in the bill-

ing or a "care of party", rate payer or any other member of the shipping group named or not named in the billing. If that is not the meaning of the two statutory sections then there is virtually no statutory restraint of rebating. The courts have said that these statutes must be given the effect that will accomplish the great public purpose that they were enacted to serve. *Armour Packing Company* v. *United States*, 209 U. S. 56; *Vandalia R. Co.* v. *United States*, (C. C. A. Seventh Cir.), 226 Fed. 713.

Northern Central Ry. v. *United States*, (C. C. A. Second Cir.), 241 Fed. 25, certiorari denied, 245 U. S. 645, is in point. In that case the Court affirmed conviction of the defendant for granting concessions in violation of Section 1 of the Elkins Act. The concessions were granted to the Mineral Railroad and Mining Company, an operator of coal mines. The Mining Company sold its coal at the mouth of the mines to the Susquehanna Coal Company which shipped the coal. The party to whom the concessions were given was not the consignor or consignee of shipments nor the rate payer.

Section 2 of the Interstate Commerce Act and Section 1 of the Elkins Act forbid the giving of rebates by common carriers to any person. And Section 1 of the Elkins Act inhibits shippers, agents of shippers, or persons acting for shippers, from soliciting, accepting or receiving rebates or concessions from common carriers. The contract warehouse companies are the agents, engaged in the distribution of carload freight at Philadelphia, of numerous well-known manufacturers and wholesalers located at various points in the United States. (R. 548, 549, 563, 597.) A rebate given to the distribution agent of those concerns is as unlawful and injurious as a rebate given to the treasurer, traffic manager or any other agent of those concerns.

(b) *The complaining warehousemen have a statutory right of action.*

Turning now to the non-contract warehouse companies. The statute clearly is sufficient to afford the protection and relief which they seek. Each of the non-contract concerns conducts a lawful business and the aggregate of their investment therein is $10,400,000 (R. 202, 218, 243, 251, 268, 561). Transportation of the goods which they handle to and from their warehouses by railroad is essential to the successful and profitable conduct of their business and in the absence of railroad transportation service the local tonnage, not transported by railroad, would not yield revenue sufficient to pay their operating expenses. (R. 210, 218, 219, 234, 235, 243, 251, 266, 267, 274). A common carrier is one who undertakes to carry the goods of *all persons* who apply for such carriage. *Hutchinson On Carriers* (3rd Ed.), Section 47. If the three common carriers, who gave the rebates, are compelled by law, their charters and their published tariffs, to transport shipments in response to reasonable request of any warehouse company then it seems they must perform that transportation service subject to all conditions imposed by the Interstate Commerce Act. If the carriers cannot arbitrarily refuse to transport in response to request of a warehouse company they cannot evade responding to the complaint of the warehouse company under sections 2 and 3 of the Interstate Commerce Act and that, we submit, is the proper test. If the carrier can deny transportation to the warehouseman then the business of the warehouseman can be destroyed at the will of the carrier. The warehouse companies, being persons within the meaning of the words "any person" as used in sections 2 and 3 of that Act, have ample authority to invoke those two sections of the Act.

Those carriers, as public servants, must respond to the reasonable request of the warehouseman.

If the non-contract warehouse companies at Philadelphia are not entitled to the protection of the Interstate Commerce Act then the great warehouse industry at all points in this country will be exposed to condemnation by means of the railroad rebate evil. And evidently the theory which so outlaws the warehouse industry will also outlaw all middlemen and those who act in a representative capacity, including commission merchants, brokers, sales agencies, banks and trust companies, not under any test reflected in the Interstate Commerce Act, but under some vague and undisclosed conception of the meaning of the word shipper which contemplates that only owners of goods shipped when their names are entered as consignors or consignees on bills of lading and, in such case, subject to certain conditions, are shippers. The Commission refused to apply such a test.

In *California Commercial Association* v. *Wells Fargo & Co.*, 14 I. C. C. 422, 427, the Commission said:

> "Where can we logically stop if we depart from the simple tests which may be put by the carrier's agent at the time of shipment: (a) Who offers this shipment? (b) Of what does it consist? (c) To whom, and where, is it bound? For its purposes as a common carrier the railroad or the express company needs no other information than may properly be elicited by these questions, and it would appear improper and unreasonable that it should be permitted to go into the vague and illimitable realms outside of and beyond such needs. The carrier deals with the shipper who tenders it, not with the owner of the property or the last and most remote person to whom it is distributed. To veer from this straight course, no matter to how slight a degree or for what apparently beneficial pur-

pose, is to lead away from the policy of the law which condemns discriminations and preferences."

The warehouse companies would be entitled to the protection of the Interstate Commerce Act, on making a proper showing, if their names were not entered on bills of lading or railroad billing. And if absence of names from billing will not bar such protection it follows that the entry of their names as care-of parties has little significance. The Commission, in awarding reparation for violations of the Act, has repeatedly reached the conclusion that absence of the name of the claimant from bills of lading or departure from customary form of entering the claimant's name as consignor or consignee on billing did not bar the claimants statutory rights. For example, in *Kyoleum Co.* v. *Director General,* 104 I. C. C. 1, 3, and in *Kaw Rvier Sand and Material Company* v. *Director General,* 93 I. C. C. 346, 347, the names of the claimants were not entered on the billing. In *Nebraska Bridge Supply & L. Co.* v. *A. G. S. S. R. Co.,* 128 I. C. C. 94, 96, trade names, instead of the correct corporate name, were entered on the billing.

Conceding that the non-contract warehouse companies, to make out their case, must show that the discrimination was not merely nominal but was unjust in that it was a source of positive advantage to their competitors and that the non-contract warehouse companies, and not other parties, were injured thereby to an appreciable extent. *Nashville Ry.* v. *Tennessee,* 262 U. S. 318, 322. We make that showing in considerable detail in Section 4 of our brief following, with reference to supporting evidence. Here we will discuss the point briefly. Stated shortly, the service involved was railroad transportation, cost measured by published freight rates, and warehouse handling, cost measured by warehouse charges. The lowest aggregate of those two cost factors diverted the business to one of

the two shipping groups which could impose the lowest aggregate. Certain shipping groups, composed of the contract warehouse companies and parties originating shipments outside Philadelphia had the benefit of rates, lower in the amount of the allowances, than the shipping groups composed of the non-contract warehouse companies and such parties. The parties originating the shipments refused to deal with the non-contract warehouse companies unless and until the non-contract companies assumed that difference in rates. The assumption of that rate difference by the non-contract warehouse companies resulted in diminution of their normal charges and profits. If and when the non-contract warehouse companies refused to assume and bear the rate difference the business was diverted to the contract warehouse companies. But in either case all of the injury and damage resulted to the non-contract warehouse companies and none to other parties and, therefore, the non-contract warehouse companies are singled out of these shipping groups and shown to be the only parties injured.

The question as to who paid the freight rates is not material here because the injury to the non-contract warehouse companies arose either from diversion of their business to their competitors or diminution of their normal profits. The freight charges on an inbound shipment from Ohio might be prepaid at point of origin or a person in Philadelphia, other than the warehouse company, might pay the freight charges directly to the railroads, but the non-contract warehouse companies were operating under conditions imposed precedent to running or continuing contracts with manufacturers or wholesalers, (R. 274-281), and payment of freight charges by others, an incident of the arrangement, could not diminish the injury or damages of the non-contract warehouse companies. Their damages, like the damages of the shipper based on insuffi-

cient or discriminatory allotment of cars, is not mitigated when another pays the freight charges.

Damage in such case is the actual pecuniary loss of each of the non-contract warehouse companies. *Penna. R. R. Co.* v. *International Coal Company*, 230 U. S. 184, 206. The unlawful rebating has continued to date. We cannot prove the amounts of the damages until the rebating is stopped by finding and order of this Court. Piece-meal proof of damages at intermediate stages would be contrary to the procedure prescribed by the Interstate Commerce Commission. *Michigan Hardwood Manufacturers Asso.* v. *Freight Bureau*, 27 I. C. C. 32, 36. *Eichenberg* v. *Southern Pacific Company*, 28 I. C. C. 584. However, definite evidence of injury was presented in great detail and stands uncontradicted. The Commission's finding of unjust discrimination, undue preference and undue prejudice is supported by an abundance of uncontradicted evidence.

In *Terminal Warehouse Company* v. *United States*, 31 Fed. (2d) 951, 959, the statutory court, passing on the very point under discussion, said that warehouse companies are entitled to the protection of the Interstate Commerce Act.

(c) *Warehousemen are consignors, consignees, rate payers and shippers.*

The evidence shows that the warehouse companies are consignors and conginees of shipments and also are rate payers.

Dealing with facilities first. An ordinary consignor or consignee of shipments, for his private side track service, assumes and bears investment charges in land and side tracks and the wages of his laborers employed to load or unload his carload freight. (R. 298). Many such persons use side track service at Philedalphia. (R. 747-756, 767-774). Prominent business concerns at Philadelphia, includ-

ing the John Wanamaker Store, Sears-Roebuck and Company and the Great Atlantic and Pacific Tea Company, operate warehouses equipped with private side tracks. (R. 280.)

Certain business concerns located outside Philadelphia, and certain business men in Philadelphia who have offices or selling facilities, but not side track or warehouse facilities, employ the contract warehouses and the non-contract warehouses and thereby obtain side track and warehouse service. (R. 189-194, 203, 204, 269-275, 302-305, 598.)

It appears from the facts stated that side track and warehouse services are ordinary services customarily provided by shippers for their own use and at their own cost and expense. The position of the contract warehouse companies is that when they provide side track and warehouse service there should be a departure from custom and practice in that the cost or expense of the service should shift from the shippers to the carriers. Another point we urge is that the contract warehouse companies and the non-contract warehouse companies, in hiring out their services, join shipping groups for the purpose of supplying the side track and warehouse service needed by every important shipping group in their transactions with the carriers.

Now to show additional shipping activities of the contract warehouse companies.

The advertisment of the Philadelphia Warehousing and Cold Storage Company (Ex. 49, Vol. III), and its letter (R. 599), clearly portray its business activities. The following is quoted from Exhibit No. 49:

> "Merchandise received in carload lots handled without cost for cartage. All freight for delivery to us should be consigned to Philadelphia Warehousing and Cold Storage Company, Beach and Noble Streets, Philadelphia, Pa., via Reading Company, to insure lowest

rates and least expense to consignors. Correspondence and business solicited. Liberal advances made."

The advertisment of the Merchants Warehouse Company (Ex. 3, Vol. III), reads in part as follows:

"Carloads received and distributed. L. C. L. lots and carload lots shipped to all points. Served by Pennsylvania System without added expense."

We quote the following from a letter from the Pennsylvania Warehousing and Safe Deposit Company, one of the contract warehouse companies, to the Chicago Jewelers Tool Works, Chicago, Illinois, under date of June 16, 1928. (Ex. 42, R. opp. 596.)

"Replying to your inquiry of the 14th instant, we beg to submit our storage rates on Machines measuring 48x24x24" weighing approximately 300 pounds each, as follows:

"50¢ per crate the first month and 35¢ per crate each month thereafter or fractional part thereof.

"We propose to store your Machines in our 23rd Street Stores, 224-228 No. 23rd Street, which is directly served by the Baltimore & Ohio Railroad Company, therefore, your carload shipments should be consigned to us as follows:

"In care of—Pennsylvania Warehousing and
Safe Deposit Company,
23rd Street Stores,
Baltimore & Ohio Delivery,
Philadelphia.

"On carload shipments arriving in the Warehouse as above mentioned we allow you two days free storage not including the day of arrival, Sundays or Legal Holidays. In other words, there will be no charge whatsoever for the number of crates removed from the Warehouse within the prescribed two days free storage

time, and our storage charge as mentioned above would only apply for the number of crates remaining in the Warehouse after the expiration of the free storage period.

"We can make out of town shipments in any quantity from this warehouse via either the Baltimore & Ohio Railroad or Reading Company, thus eliminating the out-going cartage expense, and all that we require with your shipping orders is bills of lading in triplicate, we will mark or stencil the crates at our expense."

We also quote the following from a letter from the Merchants Warehouse Company, (R. 551), one of the contract warehouse companies to George Steere and Sons, Chicago, Ill., under date of June 22, 1928:

"Replying to your esteemed favor of the 19th, as to storage rates on your Elec. Signs measuring 30"x6" x10", weight about 20 lbs., only one size sign to be shipped in a carload, we are pleased to quote you as follows:

"Storage, 1½¢ per crate each period of 30 days or fraction thereof.

"Labor, 1½¢ per crate (covers unloading car, placing in storage, and delivering either to car or tailboard of truck).

"There would be no charge on orders filed with us before the car is unloaded, and hauled by your customers within 48 hours after the arrival of the car. If not hauled within 48 hours the regular storage and labor rates would apply.

"Our warehouse is served by the Pennsylvania Railroad, enabling us to receive carload lots without cartage or switching expense and to make either carload or L. C. L. shipments without cartage or handling expense."

Those letters propose continuing arrangements between the warehouse companies at Philadelphia and out-

of-town concerns under which the warehouse companies would act as consignee of the carload shipments at Philadelphia and perform all of the activities customarily performed by consignees of carload shipments. They have the side track and warehouse facilities that enable them to perform that service. Further, the warehouse companies, in those letters, offered to perform whatever distribution of the carload shipments that was desired by the out-of-town concern and to act as consignors in reshipping any of the goods which the out-of-town concern desired to have reshipped.

The contract warehouse companies argue that they do not control the routing of shipments. But those letters clearly evince requests of the warehouse companies that the shipments be routed via the lines of the carriers from whom they received allowances coupled with statements that additional charges for trucking would be incurred by the out-of-town concern if it did not route the traffic over the lines of the carriers giving the rebates to the writers of the letters.

The Pennsylvania Warehousing and Safe Deposit Company directed that its name be written on the bill of lading and railroad way-bill as the "care-of" party. But such writings do not alter the fact that the warehouse company was to be the actual consignee of the shipment and that can be demonstrated readily. The traffic is carload traffic and, therefore, the consignor and consignee of the shipments and the transporting carrier, engaged in carload dealings or transactions and not in less-than-carload transactions. The letter shows that the carload lots were to be broken or distributed at the warehouse in Philadelphia, pursuant to the instructions of the consignor, part being delivered within 48 hours following arrival of the cars, part being held in storage, part being trucked to city deliveries and part being shipped from the ware-

house in less-than-carload lots. It is obvious that no receiver of one of the small lots was the consignee of a carload shipment. Those receivers had no dealing with the carrier. The carrier could not deliver any carload shipment to any one of such receivers and rule 23 of its freight classification (R. 567) restrains the carrier from distributing carload shipments in small lots. The only party to whom the carrier could deliver such carload shipments in Philadelphia is the warehouse company and the substance is that the warehouse company is the consignee of those carload shipments. When shipments are billed in care-of the warehouse companies there may be a collective consignee but looking to the substance of the transactions the designation of the warehouse company as the care-of party on the billing does not restrain the warehouse company from acting as the consignee of the shipments in the transaction with the transporting carrier.

Our opponents, centering their argument on the entry of the name of the warehouse company on the bills of lading or railroad billing, assert that the "care-of party" is not the consignor or consignee of the shipments, or the shipper. We submit that the entry of the name of the warehouse companies on the bills of lading or way-bills was an incident of secondary importance and that the underlying and continuing contract, as reflected in the letter, makes the warehouse company the actual consignee of the shipments. The evidence shows that writings incorporated in billing are a mere incident in the transactions or dealings between warehouse companies and users of warehouse service. That is shown clearly in the testimony of the Vice President of the Terminal Warehouse Company, one of the non-contract companies, which we quote here: (R. 283.)

> I heard the stipulation that was made between counsel this morning as to the form of billing of freight

delivered to the Merchants Warehouse Company—there were two forms of billing. As to whether it makes any difference whether the freight is billed in one or the other of the two forms shown in that stipulation, it makes no difference.

"The substance is the same under either of those two forms of billing. When we solicit business from out-of-town concerns the aggregate charge is what gets the business. Our aggregate charge is the same under either form of billing and we perform similar distribution service under either form of billing. The solicitation and the service performed by the subsidized warehouses is the same under either form of billing, and the discrimination against us is not less on a shipment billed in their care, which they distribute, than it would be when billed to any one of those subsidized warehouses as the sole consignee thereof. The name entered on the bills of lading and railroad billing are those that the warehouse company suggests be put on when it contracts to distribute the goods. We can have the consignors bill their shipments to John Doe or Richard Roe, in our care, and those shipments will be delivered at our warehouses, and when we distribute the shipments the services which we render will not differ from the services which we would render if the shipment had been billed to the Terminal Warehouse Company as the sole consignee thereof. We contract to distribute carloads of goods for outside concerns."

This Court has repeatedly held that, in the application of the Interstate Commerce Act, it will go beyond the form of railroad billing to the substance of the commerce or transactions which is controlling. *T. & N. O. R. R.* v. *Sabine Tram Co.*, 227 U. S. 111, 127; *La. R. R. Comm.* v. *T. & P. Ry.*, 229 U. S. 336, 341; *Ill. Cent. R. R.* v. *La. R. R. Comm.*, 236 U. S. 157, 163; *P. R. R.* v. *Clark Coal Co.*, 238 U. S. 456, 466; *B. & O. S. W. R. R. Co.* v. *Settle*, 260 U. S. 166; *Terminal Warehouse Company* v. *United States*, 31 Fed. (2d) 951, 959.

In the letter reproduced above the contract warehouse company, the Philadelphia Warehousing and Safe Deposit Company, directed the consignor at Chicago to name it, the warehouse company, as the "care-of" party on the bills of lading and billing. It is within the power of warehouse companies to have shipments billed in the form and manner which they prefer. (Sullivan, R. 283.) According to the argument of our opponents, allowances or rebates given to "care-of" parties are not unlawful because the "care-of" party is not a shipper. If that argument is sound the contract warehouse company made itself a "care-of" party, immune from statutory restraint of rebating, by merely writing a letter, and it follows that voluntary obedience to the command of the statute is the maximum that can be exacted from this self constituted immune because it can so easily and effectually neutralize the force of the statute. If the writings on billing, instead of substance, is to control application of the Interstate Commerce Act then that statute will lose its mandatory force.

The warehouse companies are rate payers. (Geisz, R. 402; Funck, R. 480; Justice, R. 712-715; Ex. 37, R. 574.) And of course they are at liberty to make any contract or arrangement at any time under which they will be consignors or consignees of shipments or rate payers. They operate warehouses that are in fact large shipping plants and they are public shippers in that they offer and profess to ship, for hire or reward. The contention that these professional shippers are not shippers is self contradictory.

Several classes of concerns that undertake to do the shipping for other parties, as a lawful business, for hire or reward, in well-reasoned court decisions, have been found to be shippers. For example, freight forwarders, *I. C. C.* v. *D. L. & W. R. R. Co.*, 220 U. S. 235; *Great Northern Railway* v. *O'Connor*, 232 U. S. 508. Also a freight

forwarder or customs house broker, *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444. Also warehouse companies, *Terminal Warehouse Company* v. *United States*, 31 Fed. (2d) 951, 958, 959; *McCormick Warehouse Company* v. *Pennsylvania R. Co.*, 148 I. C. C. 299; *Scattergood* v. *Director General*, 60 I. C. C. 155.

In an early case, *United States* v. *Milwaukee Refrigerator T. Co.*, 145 Fed. 1007, Circuit Court, E. D. Wisconsin, petition for an injunction under the Elkins Act, the court said:

> "And if an owner (of goods shipped), having full dominion in all respects, conveys to another the dominion for transportation purposes, that other in all dealings respecting transportation should be deemed the owner and shipper."

These cases come before this Court for review under statutes which forbid the giving of rebates by carriers or their agents and which forbid the receiving of rebates by shippers, agents of shippers and persons acting for shippers. The purpose and intention of the legislative branch to inhibit every person capable of being instrumental in giving or receiving rebates from taking such action is very clearly manifested by the statutes. Nevertheless the contract warehouse companies, the distribution agents of some of the largest manufacturers in the country, are claiming immunity from application of those statutes, under the disguise of the non-shipper argument, which if approved by the Courts or the Commission would enable any warehouse company, freight forwarder, commission merchant and middle-man in the United States to avoid the statutory restraints and become a conduit for the passage of the prohibited rebates. Those selected by the carriers to function as such conduits would be the immunes and their competitors would be the outlaws whose property could

be confiscated or destroyed in the operation of the rebating practice with impunity.

3. The rebates are allowances out of the freight rates on selected traffic of the Contract Warehouse Companies.

The rebates were confined to selected long-haul or remunerative traffic. They were not given on traffic affording only switching revenue to the carrier giving the rebate. (Ex. 1, R. 456, 469-70, 478, 482, 489, 496, 504, 513, 520, 530; Ex. 53, R. 618; Ex. 54, R. 636; Ex. 55, R. 655; Ex. 57, R. 688; Ex. 86, R. 714, 717; Ex. 88, R. 736, 738.)

We cannot transform these various rebates on selected traffic into anything resembling compensation of freight handlers or rent for buildings used as railroad freight stations. A description of the allowances follows:

The Pennsylvania Railroad Company gave allowances to the Merchants Warehouse Company on its inbound and outbound shipments of freight in carload and in less-than carload lots. The rates of those allowances were 3½ cents per barrel and 2½ cents per barrel, respectively, on flour, and 50 cents per ton and 35 cents per ton, respectively, on all other freight. (Funck, R. 442-3; Ex. 7, R. 556).

The Pennsylvania Railroad Company gave allowances of 50 cents per ton to the Quaker City Cold Storage Warehouse Company on its inbound carload shipments of butter, cheese, eggs and dressed poultry. (Davis, R. 247; Ex. 7, R. 556). The Quaker City Cold Storage Company did not contest the Commission's order.

The Baltimore and Ohio Railroad Company gave allowances of 50 cents per ton to the Pennsylvania Warehousing and Safe Deposit Company on its inbound and outbound carload shipments of freight of all kinds. (Justice, R. 400).

Reading Company gave allowances to the Pennsylvania Warehousing and Safe Deposit Company on its inbound carload shipments of freight. The rates of the allowances were 15 cents per ton on newsprint paper and 30 cents per ton on other freight. (Justice, R. 400).

Reading Company also gave allowances to the Philadelphia Warehousing and Cold Storage Company on its inbound carload shipments of freight. The rates of the allowances were 50 cents per ton on such freight requiring cold storage service and 30 cents per ton on such freight not requiring cold storage service. (Gheen, R. 361).

According to the argument of our opponents the warehouses of the Pennsylvania Warehousing and Safe Deposit Company are public freight stations of Reading Company and the Baltimore and Ohio Railroad Company. The alleged rent for the use of those stations paid by the Baltimore and Ohio is an allowance of 50 cents per ton on the inbound and outbound carload traffic from those warehouses. But the alleged rent payable by the Reading Company for identical use is materially different, that is, an allowance of 15 cents per ton on inbound carload shipments of newsprint paper and 30 cents per ton on other inbound carload freight. The Reading did not pay any allowances on shipments outbound from those warehouses. And the services which that warehouse company performed on freight included in shipments outbound via the Baltimore and Ohio were similar to services which it performed on shipments outbound via Reading Company Lines. (Justice, R. 304).

Evidently an allowance on part of the freight handled in a certain building cannot transform that building into a railroad freight station. And our opponents have not attempted to convert such allowances into anything resembling rent for use of a building or facility.

4. The discriminatory effect of the rebates.

Let us point out the effect of the rebates, in unjust discrimination inflicted on the business of the non-contract competitors. A description of the warehouse business presented in the light of railroad rates and freight classification rules, is necessary foundation.

Rates for the transportation of freight in carloads are lower than rates for the transportation of freight in less-than-carload lots. (Sullivan, R. 269; Ex. 39, R. 596). The carriers, in rule 23 of the Consolidated Freight Classification, announce that they will not distribute carloads of freight at destination of shipments in less-than-carload lots and that they will not assemble several small lots into a carload for transportation. The carriers, in rule 14 of that Classification confine their carload service on each shipment to one consignor and one consignee and, in rule 27 of the Classification, the carriers cast upon the shipper the burden and cost of loading carload freight into cars and unloading carload freight. The three classification rules (R. 567, 568) are in harmony with the lower scales of rates applicable to carload traffic and strict enforcement of those classification rules obviously is essential to the preservation of the higher scale of rates on less-than-carload traffic and the lower scale of rates on carload traffic. In fact those three classification rules point out the broad field of business activity for the warehousemen, exempt from railroad competition, enabling the warehouseman to deal in carload traffic and to supplement his storage service by keeping "spot stocks" for manufacturers and wholesalers and by assembling and distributing carload freight. The business of the warehouseman is described in great detail in a publication issued by the United States Department of Commerce. (Ex. No. 18, R. Vol. III).

To summarize. The principal business of the warehouse concerns is voluntary or solicited storage, assembling, distribution and various services incidental thereto. The carriers may be involuntary storers, when compelled to store as an incident to their transportation service but, in view of rule 23 of their Classification, they cannot assemble or distribute carload freight. And the performance by a common carrier of both transportation service and trade service would nullify application of its published rates for the transportation service. *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361.

Our opponents assert that a classification exception to rule 27, the loading and unloading rule, negatives application of that rule at warehouses of the contract warehouse companies. In a later section of this brief we assail the validity of that exception. But no exception to rule 23, the assembling and distribution rule, has been asserted or proved.

The services performed by the contract and non-contract warehouse companies, which we have described generally, and the similarity of the services performed by each of those two groups of warehouse companies were fully proved. We here present reference to the evidence in form admitting ready comparison—

Non-Contract Competitors	
Terminal Warehouse Company	(Sullivan, R. 266-275; Ex. 37-A, R. 574)
James Gallagher	(Gallagher, R. 251-2; Ex. 37-B, R. 577)
Northeastern Warehouse Company	(Foster, R. 218-21; Ex. 37-E, R. 580)
Walter A. Bailey	(Dickson, R. 202-5; Ex. 37-E, R. 581)
Rex & Company, Inc.	(Rex, R. 243-4; Ex. 37-D, R. 582)
Industrial Cold Storage and Warehouse Company	(Mooney, R. 234-7; Ex. 37-F, R. 588)
Summary	(Morgan, R. 296; Ex. 37, R. 572)

Contract Warehouse Companies	
Merchants Warehouse Company	(Henry, R. 187-194; Richardson, R. 374-386, R. 548-555)
The Pennsylvania Warehousing & Safe Deposit Company	(Justice, R. 302-5; 398-9; Ex. 42-47)
The Philadelphia Warehousing & Cold Storage Company	(Geisz, R. 309-11, Ex. 50)

The revenues of the warehouse companies arise from that storage, handling, spot stock and distribution service. (Morgan, R. 296). And the traffic or business, requiring transportation by railroad to or from warehouses is the chief source of revenue to the non-contract competitors because other traffic or business, not transported by railroad, would not provide revenue sufficient to pay the warehouse operating expenses. (Foster, R. 218-19; Mooney, R. 234-5; Rex, R. 243; Gallagher, R. 251; Dickson, R. 210; Sullivan, R. 266-7, 274.)

The court below, in the finding of fact numbered 4, (R. 59) found that "no payments are made if the shipments are unloaded within the 48 hours of free time". If that is a finding that the three common carriers did not give allowances to the contract warehouse companies on shipments unloaded from inbound cars within 48 hours following arrival of the cars at the warehouses it appears to be in error. The carriers did not refrain from giving allowances on freight unloaded within that period of 48 hours. But the contract warehouse companies refrained from exacting compensation from their customers, for warehouse handling services, on freight which the contract warehouses delivered or distributed through the warehouses to those customers within 48 hours following the arrival of the inbound cars, containing that freight, at their warehouses in Philadelphia.

The Merchants Warehouse Company performed such distribution services free of charge to its customers and was

compensated, by the allowances, for its performance of the distribution. (R. 193, 194, 241, 242, 377, 550, 551.) Likewise, the Pennsylvania Warehousing and Safe Deposit Company. (R. 399, 400, Ex. 42, R. 596-597.) Likewise, the Philadelphia Cold Storage and Warehousing Company. (Ex. 50, R. 598). Delivery of carload freight by a railroad company, in accordance with rule 14 of the Freight Classification, is delivery of each carload intact to one consignee. Distribution of carload freight differs from the railroad delivery of carload shipments in that distribution involves separation of the carload into smaller lots involving removal of part of the tonnage from the warehouses by trucks within 48 hours, storage of part of the tonnage in the warehouses and removal therefrom later by trucks or reshipment pursuant to withdrawal or delivery orders covering small lots issued by the owners of the freight.

We insist that, under rule 23 of the Classification, railroad transportation of inbound shipments was completed upon placement of the loaded car upon the side tracks of the warehouse companies. That accomplished delivery of the carload shipments. Handlings of the freight following that delivery was distribution which, under rule 23, is trade service. Common carriers cannot perform trade services and the Commission will not authorize allowances to be given as compensation for services, not embraced in common carrier duty, which the carriers cannot perform through use of their own facilities and employees. *Gulf States Steel Co.* v. *Director General*, 66 I. C. C. 255, 258.

The contract warehouse companies refer to the 48 hour free distribution service as competent evidence of their performance of railroad transportation service meriting compensation in the form of the allowances. The testimony of the non-contract warehouse companies is that that free distribution service was one of the inducements,

having exceptionally strong force, used by the contract warehouse companies in diverting trade or business from the non-contract warehouse companies to the contract warehouse companies. Such use is clearly shown in the letters of the contract warehouse companies in which they solicited the patronage of various users of warehouse service. (Ex. 6, R. 549-55; Exs. 42-47, R. opp. 596; Ex. 49, R. Vol. III; Exs. 50, 51, R. opp. 598.)

The 48 hours free distribution service has no foundation other than that it is one of the business practices of the contract warehouse companies. (R. 447, 448). Demurrage rules apply to the detention of railroad cars but not to freight after it is removed from the cars. (R. 448). The freight, when unloaded from the cars was in the custody and possession of the warehouse companies under their contracts and arrangements with the owners of the freight and, of course, the authority of the carriers to apply any rules to that freight ended when they delivered the inbound carload shipments intact on the side tracks at the warehouses.

The controlling fact in the mind of the warehouse customer is the total cost of distribution. That cost is the aggregate of the railroad freight rates and the warehouse charges. The contract warehouse companies, in competitive solicitation of business, had the benefit of freight rates on their traffic that were lower, by the amount of the allowances, than the freight rates on the traffic of their non-contract competitors. The lower freight rates enabled the contract warehouse companies to quote and exact a lower aggregate charge on goods handled through their warehouses than their non-contract competitors, operating under the handicap of higher published rates, could quote or exact.

The discriminatory effect of the rebates is clearly shown by the testimony of the Vice-President of the Terminal Warehouse Company, one of the non-contract competitors, which we quote here. (Sullivan, R. 276).

"Q. Have the allowances been used to divert business from the Terminal Warehouse Company to your subsidized competitors?

A. Yes.

Q. Explain that use of the allowances?

A. There are hundreds of well known concerns that employ warehouses to distribute their products in the eastern cities. We and the subsidized warehouse companies actively compete in soliciting the business of those concerns. Those concerns ship their goods to the warehouse that can offer them the lowest aggregate charge for the distribution of their goods. The aggregate charge is made up of the railroad freight rates to the warehouse and the warehouse charges. Our subsidized competitors are enabled, by the allowances, to quote lower aggregate charges than we can quote and they underbid us and take competitive business away from us."

Seven witnesses for the non-contract competitors testified in substance that their businesses were subjected to injury or damage of three kinds, namely, (1) the contract warehouse companies, in competitive solicitation of business, underbid the non-contract competitors and thereby took certain business away from the non-contract competitors, (2) the competitive business which the non-contract competitors elected to handle was handled by them at "cut rates" imposed by their subsidized competitors with resulting shrinkage or diminution of their normal business profits, and, (3) the non-contract competitors were compelled to surrender to their subsidized competitors the warehouse handling of all flour, heavy density commodities and

most of the inbound freight distributed and delivered promptly after arrival at warehouses. (Dickson, R. 205-210; Foster, R. 222-224; Mooney, R. 235-237; Rex. R. 243; Gallagher, R. 252-253; Sullivan, R. 276-283). And this testimony is fortified by letters from warehouse patrons demanding "cut rates" of the level or measure fixed by the contract warehouse companies. (Exs. 19 to 29, inclusive, R. opp. 562).

The description of the second kind of business or transactions, described in the preceding paragraph, clearly shows actual losses on actual transactions and does not indicate theoretical or speculative damages.

When the non-contract competitors accepted and handled competitive business they incurred the regular expenses incident thereto in the form of investment charges or rents, taxes, cost of maintenance of facilities and cost of labor assignable to the handling of that competitive freight or business through their warehouses. (Dickson, R. 207; Sullivan, R. 278). The competing warehouse companies, subsidized by the rebates, afforded handling and distribution of warehouse freight free of charge. And the rebates enabled them to afford the free service. (Davis, R. 248; Richardson, R. 377; Justice, R. 399). Such free service supported by unlawful rebates undoubtedly reflects a subnormal basis of warehouse rates and charges. The imposition of that subnormal scale of charges upon the non-contract competitors deprived the non-contract competitors of opportunity to exact reasonably compensatory warehouse charges that would yield the revenue needed to pay their investment charges, cost of maintenance, taxes and cost of labor. (Dickson, R. 207; Sullivan, R. 278). The rebates yielded such revenue, or a substantial part of it, for the contract warehouse companies. (Richardson, R. 377; Justice, R. 399). The uncontradicted testimony of the seven witnesses referred to in the preceding paragraphs is that

the non-contract competitors had only the alternative of accepting competitive business at the subnormal rates imposed by their subsidized competitors or surrendering the business to their subsidized competitors. The evidence has established the fact of loss, to the non-contract competitors, resulting from shrinkage of normal charges and revenues accompanied by the regular burden of investment charges, taxes, maintenance expenses and cost of labor which obviously resulted in diminished profits and actual pecuniary loss.

The injury and damage to the business of each of the non-contract competitors was not confined to that part of the warehouse traffic which could be distributed within 48 hours following arrival in inbound cars. They sustained damage on virtually all competitive business. Free distribution of part of the tonnage of a warehouse customer was an inducement sufficient to cause the customer to allot all of his tonnage or business to the contract warehouse company that gave that inducement. (R. 241, 242).

The contention that the non-contract competitors are not shippers and, therefore, are not entitled to protection of the Interstate Commerce Act suggests that there may be parties back of or beyond these warehouse concerns that would complain if there are grounds for complaint. Judge Buffington, in his dissenting opinion in the Court below, (R. 50) stated that no shipper is complaining. The reason that no person, other than the non-contract competitors, is complaining is that no person other than those warehouse companies has been injured or damaged by the rebating practices. When a patron of warehouse companies cannot obtain, in prospective dealings with the non-contract warehouses, rates, charges and terms as low and as favorable as he can obtain from the contract warehouse companies that patron will not deal with the non-contract ware-

house companies but, by allotting his business to the contract warehouse companies he escapes from the discriminatory effect of the rebates and he obtains the benefit of concessions that the preferred warehouse company is enabled, by the rebates, to grant. (Sullivan, R. 277). That is the essence of the unjust discrimination that we complain of—the non-contract competitors must bear the full measure of the damage in the form of loss of business or diminution of normal profits. No one else is injured and, therefore, no other person has grounds for complaint.

These cases undoubtedly are of national importance. In our review of the contracts we point out that the three carriers that gave these rebates are engaged in a struggle, each with the other, to obtain an undue share of the warehouse freight traffic of Philadelphia and that the allowances are rebates used in that traffic-buying contest. The non-contract warehouses are the victims of that unlawful contest. The Department of Commerce aptly described the warehouse business as an industry of national scope. Upwards of ten millions of dollars is invested in the warehouse property of the non-contract warehouses at Philadelphia. And if the non-contract warehouses at Philadelphia are outlaws, in that they are not entitled to the protection of the Interstate Commerce Act, then a great national industry is outlawed. The law involving rebating applicable at Philadelphia also will apply to the warehouse industry throughout the United States and if these carriers can condemn and confiscate that part of the warehouse industry of Philadelphia that suits their selection, by means of the railroad rebate, it follows that the whole warehouse industry of this country can be subjected to similar treatment.

Neither the railroad companies nor the contract warehouse companies attempted to refute the proof of unjust

discrimination. The defense of that unlawful conduct is claimed immunity from application of the statutes which condemn that conduct and special privilege enabling continuance of the unjust discrimination at the will of the perpetrators.

5. The warehouses of the Contract Warehouse Companies are not railroad stations and the allowances are not the equivalent of rent paid by the railroads for use of the warehouses as such stations.

We now turn to the contention that the allowances are the equivalent of rent paid by the carriers for use of warehouses of the contract warehouse companies as public freight stations of the carriers.

We find no evidence of leasing of the warehouses for use as such railroad freight houses, or of actual use for that purpose. The railroads did not commit any of their freight to the contract warehouse companies for handling. All freight handled by those warehouse companies was obtained by them through their own solicitation and advertisments in furtherance of their private business activities. The opposition briefs ignore the mass of uncontradicted evidence which shows that the warehouses of the contract warehouse companies are devoted to the private business activities of those companies. (Henry, R. 186-199; Justice, R. 301-9; Geisz, R. 309-11; Richardson, R. 374-98; Exs. 2, 3, 4, R. 531; Ex. 6, R. 549; Ex. 12, R. 558; Exs. 42-47, R. opp. 596; Ex. 49, R. Vol. III; Exs. 50-51, R. opp. 598). If that private use does not bar public use of those warehouses as railroad freight stations a clear exposition of the possibilities of commingled public and private utilization of the warehouses is essential to the case of our opponents. Such explanation is not at hand.

In *Andrews Brothers Co.* v. *P. R. R. Co.*, 123 I. C. C. 733, 739, the Commission said:

"A carrier is not required, as part of its transportation service, to furnish warehouse space to all shippers of fruits and vegetables for the unloading, sorting, displaying, auctioneering, and delivery of carload shipments, in less-than-carload lots, to purchasers thereof. That is a trade service."

Turning to proof of the negative, that is, that the warehouses are not public freight stations.

The inbound shipments received at those warehouses were billed, at points of origin of the shipments, "in care-of" those warehouses. (Stipulations of counsel, R. 233, 312, 315). That "care-of" billing covers the solicited warehouse traffic of warehouse companies. (Ex. 6, R. 552, 553. Exs. 42, 50. Sullivan, R. 274, 279). In other words that "care-of" billing shows that the inbound freight received at warehouses of the contract warehouse companies was their solicited warehouse traffic, their private business, and was not traffic committed to those warehouses by the railroads for handling in common carrier service. It follows that there was no public use of the warehouses as freight stations for shipments inbound to Philadelphia.

Representatives of trucking companies, engaged in trucking freight to and from railroad freight stations at Philadelphia for many years, testified that the warehouses of the contract warehouse companies were not railroad freight stations. (Gallagher, R. 424. McLaughlin, R. 434, 435.)

Counsel for the non-contract warehouse companies applied a very practical test with purpose to ascertain whether warehouses of the Merchants Warehouse Company actually functioned as railroad freight stations. He caused two truck loads of goods to be tendered for transportation via the Pennsylvania Railroad, by public truckers, at two of those warehouses and the result was that the employees at those warehouses refused to accept the shipments and

referred the truckers to certain public freight stations of that carrier. (McLaughlin, R. 434-436. Hoover, R. 437-439). Counsel for the Merchants Warehouse Company objected to that evidence on the grounds that its warehouses were public freight stations only for carload freight traffic and not for the smaller quantities, necessarily less than-carload lots, that could be carried and tendered in motor trucks. (R. 436, 438). But the objections are not well-founded because allowances were given by the Pennsylvania Railroad to the Merchants Warehouse Company on its less-than-carload traffic and its carload traffic. (Funck, R. 442). That test proved that those warehouses were not railroad stations.

The telephone directory of Philadelphia, a source of information for shippers, lists the railroad freight stations in that city and the warehouse companies there and does not include the warehouses of the contract warehouse companies in its classification of railroad freight stations. (Sullivan. R. 429, 430). Board signs, visible from certain public streets in Philadelphia, plainly identify the bona-fide railroad freight stations as such. The board signs on the warehouses of the contract warehouse companies identify those structures as private warehouses and not as railroad freight stations. (Morgan, R. 440, 441).

Pamphlets of instructions were issued by the carriers for the guidance of their employees in moving cars to and from warehouses at Philadelphia. (Funck, R. 353-355. Gheen, R. 363. Sands, R. 373. Ex. 100, R. 745, Ex. 101, R. 764, Ex. 102, R. Vol. III). Those pamphlets list the public freight stations of the carriers and the industries served on private side tracks at Philadelphia. The warehouses of the contract warehouse companies and the non-contract warehouse companies are properly listed in those pamphlets not as railroad freight stations but as private indus-

tries served on private side tracks. Those pamphlets, intended for actual use of the railroad employees, undoubtedly portray the truth and are not designed, as are the railroad tariffs which our opponents rely on, to disguise unlawful rebates.

In the dissenting opinon in the Court below it is stated that the Merchants Warehouse Company received as agent from trucks and teams and forwarded over its principal's railroad 744 carloads of outbound freight. (R. 55). The statement evidently is based on the testimony of the general manager of the Merchants Warehouse Company. (R. 452). We are unable to find the evidence which shows that the Merchants Warehouse Company handled any of the 744 carloads as an agent for the railroad company and not in its private capacity as a warehouse company. Adverting to the testimony of the general manager of that Company given in greater detail (R. 374-398), and to the testimony of the Vice-President of the Terminal Warehouse Company, a competing warehouse company not subsidized by any allowances out of freight rates. (R. 269-280, 432). Comparison of the testimony of those two witnesses, describing the business activities of the two warehouse companies, shows that the non-contract warehouse company performs services similar to the services performed by the contract warehouse company and that neither of those companies performs any service embraced in common carrier duty. The testimony of the general manager of the Merchants Warehouse Company does not show that that company acts as a freight agent for the Pennsylvania Railroad Company. On the contrary, the testimony is that that warehouse company, in connection with the forwarding of outbound shipments, instead of assuming to act as such agent, obtains bills of lading from a bona fide agent of the Pennsylvania Railroad Company. (R. 385, 386). The

general manager of the Merchants Warehouse Company also testified that his exhibits 90, 91 and 92, which reflect warehouse distribution of carload shipments, are typical of inbound traffic via the Pennsylvania Railroad handled by the Merchants Warehouse Company. (R. 376-381). When freight classification rule 23, which prohibits distribution of carload freight by railroad agents, is applied to the testimony of the general manager of the Merchants Warehouse Company the proof is that that company did not act for the Pennsylvania Railroad Company and that its freight handling activities were warehouse distribution of carload freight. Exhibit No. 6, (R. 549-555), shows definitely that the freight handling services described by the general manager of the Merchants Warehouse Company were trade services, embraced in the private business activities of that company, not performed for any railroad company.

One of the contract warehouse companies, the Philadelphia Warehousing and Cold Storage Company, has a cold storage plant served on private side tracks connecting with Reading Company Lines. It seeks a finding that its cold storage plant, not used for storage in transit but for sale or merchandising of commodities following transportation of the commodities in carloads to destination, is a public railroad freight station. Another contract company, the Pennsylvania Warehousing and Safe Deposit Company, seeks a finding that a warehouse, which is a humidor used exclusively for tobacco, is a public railroad freight house. Light is excluded from this warehouse and, to maintain the desired humidity, it is virtually air proof. However, the humider warehouse is not equipped with side tracks or other railroad track facilities and, therefore, trucks must be used to move freight to or from this warehouse. (R. 302).

If any evidence in these cases tends to prove that any warehouses of the contract warehouse companies are railroad freight stations that evidence has similar force and weight in proving that the warehouses of the non-contract warehouses are railroad freight stations. The dealings between both groups of warehouses and the railroads are identical. In our judgment all of the warehouses under consideration are devoted exclusively to the merchandising of articles or commodities, preceding or succeeding transportation of the goods by railroad, that is, to trade services, and a finding that allowances out of freight rates can lawfully be given as compensation for any use of their facilities or any services which they perform would seriously impair regulation of common carriers under the Interstate Commerce Act and subject business interests to unjust discrimination and indefensible inconsistency in the application of that Act.

6. The Contract Warehouse Companies did not load freight into Railroad cars or unload cars for the railroad companies.

Now discussing the question—are the allowances compensation of the contract warehouse companies as agents of the carriers employed to load freight into railroad cars and unload freight from cars? There is no evidence of creation of the alleged agency and no evidence that any common carrier committed any of its freight for loading or unloading by any one of the contract warehouse companies.

In the preceding section of our brief we summarized the evidence which conclusively shows that the contract warehouse companies were industries served on private side tracks; that they handled only their own freight there and that they did not handle freight for any common carrier. Virtually all shippers in the United States are com-

pelled by rule 27 of the Consolidated Freight Classification to load and unload their carload freight. When a common carrier singles out that service of a favored shipper as a pretext for giving allowances on the freight traffic of that shipper the resulting allowance is a gratuity, a bounty or a subsidy.

In *Mitchell Coal & Coke Company* v. *Pennsylvania R. R. Co.*, 230 U. S. 247, 261, this Court said:

> "Paying the favored consignee for rendering a service the carrier was not bound to furnish, was a gift —a rebate—a thing *ipso facto* illegal and prohibited by the statute and for which the guilty carrier was subject to criminal indictment." . . .

The brief of opposing counsel (by Messrs. Todd and Olmsted) at page 17 presents the following statements:

> "The carrier could have unloaded the cars with men on its own payrolls hired for the purpose, but it saw fit to hire the warehouse company to do it for them."

The loading and unloading of carload freight on private premises necessarily is trade service. The carriers cannot assign their employees to perform work on the private premises of shippers. Rule 27 of the Freight Classification is the only practicable rule that can be given general application under the circumstances. Loading and unloading carload freight on private premises necessarily is outside common carrier duty. *N. Y. C. R. R.* v. *General Electric Company*, 114 N. E. 115. *General Electric Company* v. *N. Y. C. R. R.*, 14 I. C. C. 237. *Virginia Portland Ry. Co. Case*, 49 I. C. C. 332.

In *United States Cast Iron P. & F. Co.* v. *Director General*, 57 I. C. C. 677, 682, the Commission said:

> "Perhaps the most common, if not the standard, form of delivery for carload freight is the setting of a

car on the so-called team tracks of the carrier, where it may be conveniently unloaded, usually by the consignee. Another common form and a substitute for team track delivery is the switching of a car to the private siding of a consignee whose place of business is contiguous to the trunk line, clear of the main track."

Turning now to the contention that the loading and unloading of freight at warehouses of the contract warehouse companies is similar to a corresponding practice in the loading or unloading of carload freight by the carriers at public freight houses of the carriers where that service is performed in certain exceptional instances. The two services are not similar. If the contract warehouse companies or any other shipper were able to and did use the loading or unloading service at the public stations of the carriers they would be compelled to assume the cost of trucking their freight between their warehouses or places of business and the carriers' freight houses. (Sullivan, R. 431). Warehouse distribution of carload freight cannot be performed in railroad freight houses. (Sullivan, R. 428, 429). In the *Los Angeles Switching Case*, 234 U. S. 294, 311, this Court said that the standard delivery service for carload freight, of common carriers, was placement of the loaded cars on public team tracks or, the equivalent thereof, in the placement of the loaded cars on private sidings. In the cases at bar the contract warehouse companies having had the full measure of delivery service, private side track service, seek more, that is, they want the private side track service supplemented by allowances from the carriers ostensibly to compensate them for loading and unloading their own freight on their private premises.

The analogy drawn by our opponents, as stated in the preceding paragraph, is not well founded. If the business of warehouse companies, representing millions of dollars

of invested capital, could be conducted in the public freight houses of the carriers, under the loading and unloading privilege described, then that privilege might be referred to as being similar to the loading and unloading service performed at warehouses served by private side tracks. The evidence has conclusively established that warehouse service cannot be performed on carrier premises under the loading and unloading privilege described in the preceding paragraph. (Sullivan, R. 428, 429).

Letters of the Merchants Warehouse Company to prospective out-of-town customers, soliciting their business, definitely show that it deemed the service of unloading freight from cars at its warehouses to be shippers' service, and in those letters it specified charges to be paid by the shippers as compensation for the unloading service. (R. 550, 553, 554). Certain of its letters of solicitation offered free unloading service but the fact remains that it is within the power of the contract warehouse companies to collect compensation for the loading and unloading services, which they perform, from their customers. The non-contract warehouse companies are compelled to exact such compensation from their customers or assume the consequences of their failure to do so.

In the dealings between these warehouse companies and the carriers the conditions which attend the loading and unloading of cars at warehouses of the contract warehouse companies are similar to the conditions that attend the loading and unloading of cars at warehouses of the non-contract warehouse companies.

The law will not admit of a finding that loading or unloading cars as performed by the contract warehouse companies is embraced in common carrier duty and is, therefore, compensible by allowances out of freight rates and that identical service, when performed by the non-contract

warehouse companies, is outside common carrier duty and, therefore, a non-compensible trade service. The Interstate Commerce Act deprived common carriers and their officials of authority to give allowances to one and to deny similar allowances to another under the conditions stated. *Union Pacific R. R.* v. *Updike Grain Co.*, 222 U. S. 215, 220. And the command of the statute cannot be set aside by contracts, tariffs or any method of dealing. *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361, 392.

7. The contracts are unlawful agreements under which the carriers bought the large freight traffic of the Contract Warehouse Companies by giving rebates to those Warehouse Companies.

Agreements in writing, herein referred to as contracts, relating to each of the 21 warehouses operated by the contract warehouse companies are in evidence. The contracts are of two classes. Where the carriers owned property which they leased to the contract warehouse companies the contracts are leases with traffic contracts subjoined. Where ownership of property by the carriers was not involved the contracts provide for the performance of services and a traffic agreement also is subjoined.

We have incorporated in Appendix A to this brief a short reference to each of the contracts. These contracts were entered into many years ago and some of them succeeded older contracts. The contracts were entered into by the three defendant carriers, in the proceedings before the Commission, or by their predecessors or underlying companies. In our discussion of the contracts we will use the names of the three defendants as including their subsidiaries and the companies to whose property they succeeded.

The Merchants Warehouse Company operates 10 warehouses. The Pennsylvania Railroad Company owns land and structures included in four of those enterprises and the land under another. The contracts between the Pennsylvania and Merchants are leases with traffic contract subjoined relating to 5 of the warehouses and traffic contracts relating to the 5 other warehouses.

The Pennsylvania Warehousing and Safe Deposit Company operates 10 warehouse enterprises covered by contracts between it and Reading Company, that is, leases with traffic contract subjoined relating to 2 of the warehouses and traffic contracts relating to the 8 other warehouses.

The agreement between the Reading Company and the Philadelphia Cold Storage and Warehouse Company involves transfer of property from the carrier to the warehouse company with traffic contract subjoined.

The Baltimore and Ohio Railroad Company does not own any of the warehouse property used by the Pennsylvania Warehousing and Safe Deposit Company. The contracts between those two companies are traffic agreements.

Carriers may lease their property to shippers if they collect the reasonable market rental value of the leased property. *C. C. C. & S. L. Ry.* v. *Hirsch*, 204 Fed. 849. *Central of Ga. Ry.* v. *Blount*, 238 Fed. 292. We do not challenge the leasing arrangements. But we assail the traffic agreements whether subjoined to the leases or in other form. Our position is that no traffic contracts, other than the uniform bill of lading, are needed for any dealings between the carriers and the contract warehouses relating to the transportation or handling of freight. The uniform bill of lading has sufficed for similar dealings between the non-contract companies and the carriers.

The contract warehouse companies operate warehouses devoted to their private business. Competent evidence of

their performance of public service for the carriers could be produced only by showing separation of their public service, if they perform any, from their private service. The evidence of performance of service, which they adduced, is directed to their private business activities and, therefore, there is total failure to prove performance of service under these contracts. These contracts at most merely express what certain parties agreed to do at a future time. Our opponents assert that they were obligated to load or unload freight for certain carriers. They did not offer any evidence which shows that they loaded or unloaded freight for any carrier. They claim that they were obligated to insure freight. But there is no evidence of any insurance policy or any insurance under that alleged obligation. Likewise, as to all services which the contract warehouse companies assert that they performed for the railroads, they did not submit any evidence tending to prove performance of service. We seem to have a large structure of argument, in the opposition briefs, with no foundation other than writings in contracts and railroad tariffs which have little, if any, force in the absence of proof that the writings resulted in action.

First, discussing the traffic contracts between the Pennsylvania Railroad Company and the Merchants Warehouse Company. One of those contracts, (Ex. 1), entered into on July 1, 1916, has reference to a warehouse at Beach and Laurel Streets, in Philadelphia, operated by the Merchants Warehouse Company. Under that contract the warehouse company undertook:

> "To use all reasonable efforts to secure to the lines of the Pennsylvania Railroad Company's system . . . all traffic controlled by it (the warehouse company) or destined to or from the warehouse aforesaid, and to accord to traffic passing over said lines, at all times,

preference in the facilities furnished by the warehouse company over traffic passing over other lines, it being further understood that without the consent of the railroad company the said facilities shall not be extended to traffic passing over other lines." (R. 497.)

Where, as here, the party or shipper able to control or influence the routing of traffic, by railroad, agrees to confine the use of its fixed facilities to freight traffic transported by a given railroad system that agreement is the most binding traffic routing agreement that any carrier could devise.

Contract provisions of similar purport are in each of the other contracts between the Pennsylvania Railroad and the Merchants Warehouse Company. And the efforts of the Merchants Warehouse Company to influence the routing of freight traffic over Pennsylvania Railroad lines are manifested in its letters of solicitation. (Ex. 6, R. 549-555.)

The shipper being bound as stated let us turn to the binding force exerted on the carrier by the contracts. The contract of January 25, 1917, between the Pennsylvania Railroad and the Merchants Warehouse Company (Ex. 1) does not involve the leasing of property. It is a traffic agreement containing a stipulation of the Pennsylvania Railroad that it—

"will not enter into any contract with any other person or corporation, making any allowance for terminal services in connection with the loading and unloading of merchandise to or from the warehouses located within the City of Philadelphia, nor shall it during the same time engage in the business of warehousing merchandise in the City of Philadelphia, except as hereinafter provided. Provided, however, that this covenant shall not be construed so as to prevent the railroad company from warehousing freight in its terminals as an inci-

dent to delivery thereof or from entering into contracts for storage or other disposition of refused or unclaimed freight, nor shall it be so construed as to interfere with the performance by the Railroad Company of all obligations imposed upon it by law in respect to the carriage, storage or delivery of traffic. Provided, further, that in the event of the Railroad Company building any additional storage warehouses within the City of Philadelphia, either in connection with its freight stations or otherwise, the Warehouse Company shall have the option of renting or leasing such storage warehouse at a fair rental fixed by the Railroad Company within sixty days after the same is offered to it by the Railroad Company; and only in the event of the Warehouse Company not being able or willing to undertake the operation of such warehouse or warehouses, shall the Railroad Company be at liberty to engage in the business of warehousing merchandise in said warehouses . . ." (R. 456-7.)

That covenant deserves careful consideration. One who receives unlawful rebates realizes the maximum advantage therefrom only when he has exclusive enjoyment of the rebates and when his competitors are compelled to compete with him under the disadvantage of the higher published rates. The Pennsylvania Railroad Company, in that agreement, bound itself to give such exclusive advantage to the Merchants Warehouse Company for 20 years. The Merchants Warehouse Company has that great advantage, by virtue of these traffic contracts, in its trade dealings with any large manufacturer or wholesaler in the United States under which it may participate in the marketing of the goods of such manufacturer or wholesaler. A rebate given to the Merchants Warehouse Company is a rebate given to any shipping group which the warehouse company elects to create, or join itself with, and that reflects the great, and unlawful, exclusive privilege and advantage

which exists, and will continue to be utilized, until these unlawful contracts are condemned. Both shipper and carrier are obligated by these contracts to do what the Interstate Commerce Act forbids. Here is the essence of the most pernicious rebating.

The competing railroad system, embracing the Baltimore and Ohio Lines and the Reading Company Lines, competitors of the Pennsylvania Railroad, met this unfair buying of traffic by the Pennsylvania by use of a similar traffic buying scheme and device.

Now turning to the contracts of Reading Company. In the agreement, of January 12, 1897, between the Philadelphia and Reading Railway Company (Reading Company being the successor in interest) and the Pennsylvania Warehousing and Safe Deposit Company (Ex. 53), the warehousing company undertook—

> "to appoint at least one agent who in addition to the general superintendent of the Warehousing Company . . . shall maintain a careful supervision of the operation of the warehouse; shall solicit consignments over the Railway Company's lines to warehouse, by mail and by personal application to local shippers and consignees; and one of whom shall visit western shippers of flour in September and March of each year or more frequently if suggested by the Railway Company and approved by the Warehousing Company for the purpose of securing consignments over the lines of the Railway Company to and through said warehouse." (R. 614-5.)

Adverting to our argument in section 4, *ante*, showing that shrinkage of the aggregate charge was a plan employed by the contract warehouse companies to entice patronage or business from their non-contract competitors. That argument derives additional support from the con-

tracts under discussion. We direct attention to certain provisions of the traffic contract (Ex. 53), wherein the warehouse company subsidized by Reading Company is obligated to meet, in the measure of warehouse charges exacted by it, the level of warehouse charges exacted by warehouse companies subsidized by the Pennsylvania Railroad Company and the Baltimore and Ohio Railroad Company. Those provisions read as follows—

> "To make the consignees or consignors no other or greater charge or charges for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being by other warehousing companies for similar services upon the lines of the Baltimore & Ohio Railroad in the City of Philadelphia unless the consent of the Railway Company to make higher charges shall be given in writing." . . . (R. 615.)

The contract between the Reading Company and the Philadelphia Warehousing & Cold Storage Company (Ex. 57) contains a similar provision, which we quote here:

> "And it is further understood and agreed that the *WAREHOUSING COMPANY* shall make the consignees or consignors no higher charge for service rendered in handling, receiving, storing or shipping merchandise than are charged for the time being, for similar services, by other railroad warehouses in the City of Philadelphia, unless the consent of the *RAILWAY COMPANY* to make higher charges shall be first given in writing, and that in case it shall at any time be claimed that such consent shall be unreasonably withheld by the *RAILWAY COMPANY*, the matter in dispute shall be determined by arbitrators to be appointed in the manner and with the effect hereinbefore provided." (R. 689.)

The Baltimore & Ohio, in its contract with the Pennsylvania Warehousing and Safe Deposit Company, seems to

have put itself in a position to meet the cutting of rates instituted by its competitors and accomplished by means of the collusive allowance arrangements with contract warehouse companies. In support of that statement we quote the following from the contract, of August 2, 1926, (Ex. 88), showing the undertaking of the Baltimore & Ohio and two of its subsidiaries —

> "the Railroad Companies agree to pay to the Warehousing Company as a terminal allowance for the facilities to be afforded as provided in and by the aforesaid . . . fifty cents . . . per net ton of two thousand . . . pounds for every net ton moved into or out of the Twenty-third Street Stores of the Warehousing Company over the lines of the railroads of the Railroad Companies on which they receive a road haul . . . so long as any other railroad in Philadelphia competitive with the Baltimore & Ohio shall make similar allowance to other warehouse companies in Philadelphia competitive with the Pennsylvania Warehousing and Safe Deposit Company unless sooner estopped from making such allowance by a decision or order of the Interstate Commerce Commission." . . . (R. 736.)

The letter under date of August 2, 1926, in Exhibit No. 88, (R. 737), shows that the Baltimore & Ohio also agreed to give the allowance on freight at other warehouses of the Pennsylvania Warehousing and Safe Deposit Company under the same conditions as those stated in the covenant quoted last above.

These several contracts show the Pennsylvania Railroad as the leader in buying warehouse freight traffic by means of the allowance device and the Reading and Baltimore & Ohio endeavoring to get their shares of that traffic by employing similar devices. The provisions of the contract, quoted last above, evince reluctant engagement in unlaw-

ful conduct with expectation that the Government would discover and restrain the participant from long continued violation of law. Such contracts obviously cannot be construed to reflect arrangements whereby carriers obtained public use of facilities or performance of compensible service.

If the allowances, stipulated in these contracts, were lawful compensation of freight handlers employed to handle freight for the railroad companies of course the alleged compensation would be payable on all of the tonnage handled by the freight handlers. But if the allowances are payable only on the more remunerative line-haul traffic, and not on traffic that earns the smaller switching revenue, then the allowances are revealed as rebates used to buy the traffic of the carriers' selection. We here direct attention to covenants of the contracts that, under that test, establish that the allowances are traffic buying rebates. In the contract between the Pennsylvania Railroad Company and the Merchants Warehouse Company, dated January 25, 1917, (Ex. 1, R. 456), it is provided as follows:

> "except that no payment shall be made upon bulk freight nor upon freight the movement of which by the Railroad Company has been performed at a switching rate, nor upon material and supplies belonging to the Railroad Company."

A similar provision appears in the other Pennsylvania Railroad Company contracts. (Ex. 1, R. 469-70, 478, 482, 489, 496, 504, 513, 520, 530.) Also in the Reading Company contracts. (Ex. 53, R. 618; Ex. 54, R. 636; Ex. 55, R. 655; Ex. 57, R. 688). Also in the Baltimore and Ohio Railroad Company contracts. (Ex. 86, R. 714, 717; Ex. 88, R. 736, 738).

In the briefs of the Merchants Warehouse Company it is asserted that the contracts of that company with the

Pennsylvania Railroad Company obligate the warehouse company to load and unload cars for the railroad company. But we fail to find such obligation expressed in those contracts.

In those contracts the warehouse company ostensibly agreed to—

> "promptly load and unload and handle all freight received by it to be shipped over the lines of the railroad company or received by it for delivery to consignee and in the case of incoming freight to promptly notify the consignees of the arrival thereof." (R. 483.)

And the railroad company agreed to—

> "pay to the said Warehouse Company for all services rendered by it in and about the receipt and delivery of freight, . . . both incoming and outgoing, . . . thirty five (35) cents per ton". . . . (R. 482.)

But the provisions of those contracts do not expressly enable the railroad company to commit any of its freight to the custody of the warehouse company for loading, unloading or handling or to lay down any freight handling or service task to be performed for it by the warehouse company. That omission, in our judgment, reflects design rather than inadvertence. It is definitely established by the evidence that the warehouse company handled only its own freight in furtherance of its private business dealings and, therefore, an allowance given pursuant to the quoted contract conditions was a gratuity or subsidy. The railroad company did not agree to pay for loading or unloading cars, as is asserted by our opponents. According to the contracts, the allowances were given to "pay to said warehouse company for all services rendered by it in and about the receipt and delivery of freight" etc. And the only services rendered by the warehouse company were

warehouse trade services in furtherance of its private business activities. The "pay" provisions of the contract are in harmony with the provisions of one of the published tariffs of the Pennsylvania Railroad Company. (R. 739.) That tariff reads in part as follows:

> "When freight is handled through the warehouse shown below, allowances will be made on inbound and outbound freight by the railroad company to these companies . . . . as follows:"

The name of the Merchants Warehouse Company and a specification of the rates of allowances to be given to it follows the quoted statements. (R. 740-742.)

The contracts and the tariff not only fail to afford support for the assertions that the allowances were given for loading or unloading cars but they definitely show that the allowances were given for another purpose, that is, for all services rendered by the Merchants Warehouse Company in handling freight through its warehouses—distribution of carload freight, a trade service as described in Section 4 *ante*. This distribution also is performed by the non-contract warehouse companies and they are not compensated therefor by the carriers. The allowances are not compensation for a specified service but are a general business subsidy and, like rebates, can be used by the receiver for any purpose.

The records made in claiming and paying the allowances or rebates contradict the assertions that the allowances were compensation for loading or unloading cars, that is, the contract warehouse companies did not claim compensation for loading or unloading cars. The Merchants Warehouse Company claimed sums of money for "terminal charges on cars" etc. (R. 199, 200.) The Pennsylvania Warehousing and Safe Deposit Company made claims for

"to tonnage due at" etc. (R. 314.) The Philadelphia Cold Storage and Warehousing Company made claims for "deliveries made for week" etc. (R. 314, 315.) We submit that if the appellants honestly believed that they were entitled to compensation for loading or unloading cars, under their contracts with the carriers, some of their numerous claims would have reflected that belief.

The contracts ostensibly require the contract warehouse companies to perform various other services for the carriers including (1) assumption of responsibility for payment of freight charges, (2) insuring freight in the warehouses, and (3) notifying consignees of arrival of shipments. In Section 5 *ante*, we gave reference to the evidence which shows that the only freight handled by the contract warehouses was freight which they obtained through their own advertisements and other forms of solicitation. It necessarily follows that any services performed by the contract warehouse companies in handling that freight were services embraced in their trade activities and not performed in the behalf of any common carrier.

The traffic contracts should be condemned for the reason that they contribute to violations of section 2 of the Interstate Commerce Act and section 1 of the Elkins Act. *Armour Packing Company* v. *United States*, 209 U. S. 56, 81; *Louisville & Nashville R. R.* v. *Mottley*, 219 U. S. 467, 479.

8. Certain shipping interests prefer continuance of the allowance arrangements and other large shipping interests desire discontinuance of the arrangements.

The Association of Manufacturers Representatives, intervener, and other associations at Philadelphia oppose cancellation of the allowances on the grounds that shippers who use both railroad service and warehouse service will

be compelled to pay increased charges if the allowances are cancelled. However, such cancellation will put the warehouse business of Philadelphia upon the same terms and conditions, additional charges for warehouse service, that the warehouse business of other cities is on now. *Loading and Unloading Carload Freight,* 101 I. C. C. 394, 414. Representatives of those shippers at Philadelphia, in the year 1924, sought to induce the three carriers to give the allowances to all warehouse companies at Philadelphia instead of confining the benefits of the allowances to the contract warehouse companies. (R. 283-285.) The allowances were not given to the other warehouse companies.

On the other hand, certain large shipping interests, the western flour mills, voiced their opposition to the arrangements between the carriers and contract warehouse companies. (R. 254-266.) The western flour mills desire strict enforcement of bill of lading conditions when they ship flour on order-notify bills of lading to Philadelphia, that is, they very properly desire surrender of the bill of lading as a condition precedent to delivery of the carload of flour. But an important part of the business of the contract warehouses is to afford storage for hire and they keep the flour in storage for long periods without requiring surrender of bills of lading. The allowances divert virtually all of the storage, delivery and distribution of flour at Philadelphia to the contract warehouse companies. (R. 255, 282.)

Undoubtedly warehouse facilities are a valuable addition to the various kinds of terminal facilities for handling freight in all large cities. In the absence of the allowances the facilities of all warehouse companies at Philadelphia would be available on equal terms for freight service and, not being agents of the carriers, demurrage rules would compel those companies to unload cars promptly. But the allowance practice curtails the freight terminal service

there as shown in the following testimony of the President of the Millers National Federation. (R. 265.)

> "I said the effect of this arrangement between the railway company and these warehouse companies was to deprive us of the advantage of the rules which are made by the railroad companies to secure the prompt unloading of cars and it, incidentally, results in delay in the payment of the draft or papers which accompany the bill of lading.
>
> Q. What rules do you refer to of the railroad company?
>
> A. I refer to the rules with reference to demurrage, the charges for storage."

Of course, if the warehouse facilities of the contract warehouse companies were needed to augment the freight terminal facilities of the carriers or to expedite the release of railroad cars, the railroad companies would be parties to this proceeding before this Court urging continuance of the contractual and allowance arrangement. The carriers are not urging continuance of the contract arrangement and the proper inference is that cancellation of the allowances will be more beneficial to the carriers and the shipping public than continuance of the allowances.

9. The statutes require that the giving of the rebates be discontinued and the carriers have no alternative course of action.

The contract warehouse companies evidently take the position that the Commission's authority, if properly exercised, is confined to an alternative order which would permit the carriers either to discontinue giving the allowances to the contract warehouse companies or to give the allowances to the contract warehouse companies and simi-

lar or equivalent allowances to all competing warehouse companies at Philadelphia. Our position is that the statutes do not authorize such alternative. If the rebates are unlawful no ruling by the Commission would make them lawful and the giving of such rebates to such additional parties would increase rather than diminish the unlawful conduct of the carriers. In *Penna. R. R. Co.* v. *International Coal Company*, 230 U. S. 184, 206, this Court said that rebates could not be extended to other parties, not even to competing shippers as compensation for their damages.

It may be that such an alternative order of the Commission is customary and proper in many cases of violation of section 3 of the Interstate Commerce Act. Very often violations of section 3 reflect errors of judgment of railroad officials which cannot be avoided in the light of foresight of the railroad officials at the times they formulate and publish rates. But the cases at bar are based on wilful and deliberate violations of section 2 of the Interstate Commerce Act and it may well be said that the milder violations of section 3 are merged in the more serious violations of section 2 which admit of no alternative order.

10. The Commission very properly condemned certain writings in the published tariffs of the railroads.

The Commission, in its report, condemned certain writings in the filed and published tariffs of two of the carriers and, by its order, required those carriers to cancel those tariff provisions. The tariff provisions purported to make the warehouses of the contract warehouse companies public freight stations in the service of the carriers when, in fact, the warehouses were not such public stations. Further, the tariffs relating to the allowances were

in conflict with rules 23 and 27 of the Freight Classification as stated in Section 4 *ante*.

The use of published tariffs to disguise or conceal violations of the Interstate Commerce Act and Elkins Act is a much used device. The practice received attention in several court decisions. *Central R. Co. of N. J.* v. *United States*, 229 Fed. 501, 507, 508; *Pennsylvania Company* v. *United States*, 257 Fed. 261, 263; *Nichols & Cox Lumber Company* v. *United States*, 212 Fed. 588, 592, 593. Also in several reports of the Commission. *McCormick Warehouse Company* v. *Pennsylvania R. R. Co.*, 148 I. C. C. 299; *A. T. & S. F. Ry. Co.* v. *Kansas City Stock Yards Company*, 33 I. C. C. 92; *North Packing & Provision Company* v. *C. M. & St. P. Ry. Co.*, 80 I. C. C. 737, 740; and *Consolidated Southwestern Cases*, 123 I. C. C. 203, 380. In *Central R. Co. of N. J.* v. *United States*, *supra*, the court, C. C. A. 3rd Circuit, stated that notice of certain allowances out of freight rates, had been published in 222 railroad tariffs filed with the Commission. 229 Fed. at 508. Nevertheless, the court concluded that the allowances were unlawful rebates given in violation of the Elkins Act.

Our opponents find support for their position in abortive use of the Jones tariff. (Br. 17.) But our conclusion is that the attempted adaptation is a transparent hoax. We here quote the tariff provision, Pennsylvania Railroad Tariff I. C. C. No. 14322 (R. 696), which the contract warehouse companies rely on—

> "Rule 32. Warehouses Considered Freight Stations During Free Time.—In the application of Storage Rules and Charges as published in Agent B. T. Jones' I. C. C. No. 1491, P. S. C.-Pa.-- No. 86 (Agent's Index No. 54), supplements thereto or reissues thereof, the following warehouses in Philadelphia, Pa., are considered freight stations during the free time:"

Then the warehouses of the Merchants Warehouse Company are named in the tariff. Stated briefly, the Jones tariff, bearing the number I. C. C. 1491, is a bona fide tariff of storage rules and charges which, as designed by its compiler, could not be utilized in furtherance of the rebating scheme. But, in furtherance of the rebating scheme, the railroad giver of the rebates wrote the quoted statements in one of its tariffs, bearing the number I. C. C. 14322, for the sole purpose of converting the Jones tariff into a component of the rebating scheme. The Jones tariff, by express provisions printed therein, applies only on railroad premises and, therefore, has no application on premises of the Merchants Warehouse Company. Further the substance of the Jones tariff is contained in rules which provide for the accrual of storage charges after the expiration of a period of 48 hours free time. When separated from the rules relating to the accrual of storage charges, which is the effect of tariff 14322, the free time rules have no substance or application—they are a vacuum. (Oberg, R. 447-448.) That is all that that tariff provision in tariff 14322 amounts to—a pretense of application of the vacuum at warehouses of the Merchants Warehouse Company. The tariff may be used as foundation for arguing, before a tribunal, that the tariff writing converted warehouses of the Merchants Warehouse Company into public freight stations in railroad service during an alleged free time and that these chameleons changed or shifted to private use at other times. But when only free time rules and no revenue rules are applicable the tariff is a hoax. On railroad premises both free time and revenue rules apply but on premises of the warehouse company only free time is applicable. The question as to whether certain buildings or facilities are, or are not, public freight stations is a question of fact that calls for better evidence than cunningly devised writings in a railroad tariff. In Section

4, *ante*, we pointed out that free distribution of carload freight, within the 48 hour period, was one of the most forceful inducements used by the contract warehouse companies in enticing business from their non-contract competitors. Here we have evidence of specially designed preferential tariff writings having no use or purpose other than deception.

Turning to another of the device tariff provisions which we reproduce here.

Pennsylvania Railroad Company tariff G. O.-I. C. C. No. 14400, reads in part as follows:

> "When freight is handled through the warehouse shown below, allowances will be made on inbound and outbound freight by the railroad company to these companies . . . as follows:"

The name of the Merchants Warehouse Company was "shown below" in that tariff and the rates of the allowances also were specified. (Ex. 98, R. 739.)

That tariff provision does not reflect compliance with the carriers' tariff publishing duty as prescribed in section 6 of the Interstate Commerce Act. The prescribed duty is to describe the service and specify the rates applicable for transportation service performed by the publishing carrier from one point to another point. In the quoted tariff provision the carrier did not specify any service that it offered to perform or any rates that it would exact for such service. It announced that it would pay certain allowances out of its freight rates, etc., when the named shipper handled freight through the shipper's warehouses. The substance would be the same if the tariff provision read—the publisher of this tariff will pay certain rebates to the Merchants Warehouse Company on each 100 pounds of merchandise which the warehouse company ships outbound or causes to be shipped inbound over the railway lines of

the publisher. The sole beneficiary of the rebate is named in the tariff. That writing is not a bona fide provision of a tariff. It is notice of purpose to give rebates.

Pennsylvania Railroad tariff G. O.-I. C. C. 14700 (Ex. 59, R. 693), contains writings to the effect that certain of that carrier's public freight stations at Philadelphia—

> "include facilities of the Merchants Warehouse Company"

That writing obviously would not convey very much information to a shipper. It would inform him that freight station privileges of certain Pennsylvania Railroad freight houses were enlarged or extended to embrace the freight traffic of the Merchants Warehouse Company. Private use of a building necessarily will bar public use of it.

11. The District Court erred in staying and suspending the Commission's order of December 28, 1929, pending appeal to and determination of the appeal by this Court.

On the cross-appeal the Government, the Commission and the non-contract warehouses have assigned as error the action of the District Court, (R. 92), in staying and suspending the order of the Commission dated December 28, 1929, pending determination of the appeal by this Court.

A question, similar to the one raised by this cross-appeal, was involved in the case of *United States et al.* v. *Virginian Railway Company*, 272 U. S. 658, where this Court held that the action of the District Court in suspending the order pending the appeal was unwarranted.

In granting this stay the District Court completely ignored the fact that none of the railroad companies, which commit the unlawful discrimination, prejudice and preference condemned by the Commission, and which were the

only defendants before the Commission and the only parties to whom the Commission's order was directed, appealed from the Commission's order or were made parties in the District Court. To the contrary there is every reason to believe that the railroad companies would have acquiesced in the Commission's order and have ceased and abstained from publishing or making the allowances to the contract warehouse companies which were condemned by the Commission.

The contract warehouse companies and the railroad companies well knew that the operation of the contracts was of doubtful legality. They, therefore, provided for discontinuance of the rebating upon discovery and condemnation by the Commission. Thus in the agreement between The Baltimore and Ohio Railroad Company, et al., and The Pennsylvania Warehousing and Safe Deposit Company, dated August 2, 1926, it is provided:

> "3. . . . , the Railroad Companies agree to pay to the Warehousing Company as a terminal allowance for the facilities to be afforded as provided in and by the aforesaid agreements, fifty cents ($.50) per net ton of two thousand (2,000) pounds for every net ton moved into or out of the Twenty-third Street Stores of the Warehousing Company over the lines of the railroads of the Railroad Companies on which they receive a road haul instead of the thirty-five cents ($.35) per net ton as in said agreements mentioned so long as any other railroad in Philadelphia competitive with the Baltimore & Ohio, shall make similar allowance to other Warehouse Companies in Philadelphia competitive with the Pennsylvania Warehousing & Safe Deposit Co. unless sooner estopped from making such allowance by a decision or order of the Interstate Commerce Commission, the Public Service Commission of Pennsylvania, Court of Competent Jurisdiction or by law." (Ex. 88, R. 736.)

And in the agreement between The Pennsylvania Railroad Company and the Merchants' Warehouse Company, dated July 28, 1927, it is provided:

> First: . . .
>
> "(b) . . . provided, however, that the Railroad Company shall have the right to cancel or abrogate this agreement and/or the payment of allowances provided for in this paragraph in the event such action is authorized, permitted or required by any order, decision, or law hereafter made, rendered or enacted by any State or Federal tribunal of competent jurisdiction, or in the event that these payments of allowances are held by any such tribunal to create undue preference or undue prejudice, upon such notice to the Warehouse Company in writing of its intention so to do as may be necessary to enable the Railroad Company to comply with such order, decision or law; . . . ." (Ex. 1, R. 463.)

These contract provisions evince the doubts that were in the minds of the makers of the contracts at the times the contracts were entered into, and show that the parties to the contracts expected discontinuance of the rebating upon discovery thereof, and we may, therefore, assume that they were prepared for such discontinuance at that time. Thus there is no ground for assertion of irreparable injury, the necessary foundation for such temporary stay.

The District Court should have compelled immediate discontinuance of the rebating, and refused to enter the restraining order. Then if its decision was reversed by this Court the contract warehouse companies could have compiled and presented their monthly bills for their contract allowances to the railroad companies and obtained payment in full. The contract warehouse companies could not possibly have suffered any damages which could not be fully measured and collected by them in the event this

Court reversed the District Court. That stay and suspension did not compel the three common carriers to continue giving the rebates. The carriers, of course, could discontinue the rebating at any time without disobeying the order of the Commission or the order of the Court below granting the stay. But the stay, coupled with voluntary action of the carriers in continuing the rebating, deprived the non-contract warehouses of the benefit of application of the Commission's order which would have stopped the rebating and resulting unjust discrimination.

The temporary stay subjects the non-contract competitors to irreparable injury, while denial of the temporary stay would not damage the contract warehouse companies. The non-contract competitors can recover no damages at all from the contract warehouse companies, but only from the railroad companies, and from them they can recover only compensatory damages.

Furthermore, in this case, the railroad companies not being parties below, the District Court neither did nor could require them to give bond to indemnify the non-contract competitors for the damages suffered while the appeals are under consideration by this Court.

The District Court found (R. 63), as did the Commission (R. 150), that the contracts in question for the payment of the allowances are devices to attempt to lend legality to the payment of rebates to the contract warehouse companies, and further, (R. 63), that the allowances paid to the contract warehouse companies are unlawful as rebates.

Rebating by railroad companies is an offense against the public,—a misdemeanor under the provisions of Section 2 and Section 10 of the Interstate Commerce Act, and a misdemeanor or felony under the provisions of Section 1 of the Elkins Act. *Wight* v. *U. S.*, 167 U. S. 512; *N. Y. C. R. R.* v. *U. S.*, 209 U. S. 56.

Section 3 of the Elkins Act provides for action by injunction, an exceptional remedy in criminal cases, to stop rebating immediately upon discovery of the unlawful conduct, leaving the burden of appeal on the participants in the rebating.

The stay, granted by the District Court, effects the very antithesis of the policy and plan of Congress, that is, the stay contemplates continuance of the rebating during this litigation, although Congress in Section 3 of the Elkins Act, has decreed stoppage of the rebating during the period of litigation.

The District Court also overlooked the fact that no one has lawful title to a rebate,—hence discontinuance of rebating never founds irreparable injury.

In view of the safeguards provided in the Urgent Deficiencies Act, and the expedition provided for by that Act which this Court has scrupulously enforced from the beginning by repeatedly granting motions to advance in cases arising under that Act, and in view of the injunctive relief provided by Section 3 of the Elkins Act to promptly stop rebating, and especially in view of the irreparable damage which is being inflicted upon the non-contract competitors by the continuance of the rebating, it is respectfully submitted that the power exercised by the District Court was not only not authorized by law but was an abuse of discretion committed after full and final hearing in which the merits of the case were adjudged against the contract warehouse companies.

12. Cases, cited by the Contract Warehouse Companies, distinguished.

It seems that the several cases cited by our opponents cannot prevail against *Lehigh Valley R. R. Co.* v. *United*

States, 243 U. S. 444. That case alone requires condemnation of the allowances in the cases at hand.

These rebates were condemned in the report of the Commission, Division 3, 160 I. C. C. 563, decided December 28, 1929, (R. 143.) No dissent. That report was affirmed by the whole Commission on February 10, 1930. (R. 177-8.) And there was no dissent. Similar rebates to warehouse companies were condemned in the report of the Commission, Division 4, in *McCormick Warehouse Company* v. *Penna. R. R. Co.,* 148 I. C. C. 299, decided November 22, 1928, without dissent, and that report was sustained by the Statutory Court in *Terminal Warehouse Company* v. *United States,* 31 Fed. (2d) 951, decided April 10, 1929, also without dissent. It seems that in the light of these unanimous decisions that rebates, of the kind under consideration, have been thoroughly condemned. It is noticeable that the contract warehouse companies have made very little effort to avoid or distinguish these cases that stand against their contentions.

Under Freight Classification rule 27 the loading and unloading of carload freight is shippers', not carriers', service. According to the evidence allowances as high as 50 cents per ton have been given ostensibly as compensation for that service. Possibly a rebate of 50 cents a ton is sufficient to make or break the business of the largest shippers. Our opponents insist that it is within the discretion of railroad officials to select the shipper service that they will convert into compensible service and to select the party to receive the compensation. Then our opponents cite cases in support of their assertion that the party so selected is entitled to the exclusive benefits of the compensation because carriers have a right to select their own agents. (Br. 8.) That is assertation of complete negation of the will of Congress as reflected in sections 2 and 3 of

the Interstate Commerce Act and section 1 of the Elkins Act. Under that theory compliance with those sections of the statute is merely voluntary and the carriers can avoid the statutory restraint at will. If the theory is sound there is no limit to the size of the rebate, if 50 cents will not break the competing shipper the theory will admit of increase of the rebates to $1 or $5 per ton. However, the cases cited by the contract warehouse companies do not support this theory.

In *United States* v. *Baltimore & Ohio R. R. Co.*, 231 U. S. 274, herein referred to as the *Arbuckle Case*, this Court approved the giving of allowances, by the several trunk line railroads that directly serve New York Harbor, to Arbuckle Brothers and the denial of similar allowances to the Federal Sugar Refining Company, a competitor of Arbuckle Brothers. That case shows that Arbuckle Brothers transported freight, including its own shipments of sugar and coffee, by means of lighters or car floats between Jay Street Terminal, a public freight station of the trunk lines at Brooklyn, N. Y., and the separate rail terminals of the several trunk lines on the New Jersey Shore at New York Harbor. Arbuckle Brothers also devoted the use of certain of its buildings and facilities in Brooklyn to ordinary railroad freight station activities in the service of the several trunk lines. The allowances were compensation for that marine service and freight station service. The Franklin Sugar Refining Company, invoking Section 3 of the Interstate Commerce Act, sought similar allowances as compensation for lightering its shipments of sugar from its refinery at Yonkers, N. Y., to the same rail terminals of the several trunk lines on the New Jersey Shore.

The facts in the cases in hand differ materially from the facts in the *Arbuckle Case*. Arbuckle Brothers devoted certain of its buildings, facilities and marine equipment to the public service of the carriers and performed both

freight station service and marine transportation for the carriers. 231 U. S. 282-284. The public station facilities of Arbuckle Brothers and its refinery were not in the same building. 231 U. S. 282, 290. One-third of the freight traffic handled through Arbuckle's freight station facilities was Arbuckle's shipments of sugar and coffee and two-thirds of that traffic was the traffic of others, that is, of the general shipping public. 231 U. S. 290. In the *Arbuckle Case* the allowances were paid in like measure by each of the several trunk line carriers which precludes the suggestion that any one of those carriers sought to buy Arbuckle Brothers' traffic by means of allowances out of freight rates on Arbuckle's traffic. In the cases at-bar all of the traffic handled through the warehouses of the contract warehouse companies was their traffic and the use of the warehouses was confied to the private business activities of those companies. The railroad companies, in rules 23 and 27 of their freight classification, professed not to perform the services for which the contract warehouse companies claim compensation in the form of the allowances under consideration here. In the cases in hand the Pennsylvania Railroad Company, through contracts and allowances or rebates, sought and obtained the exclusive privilege of transporting the freight traffic of the Merchants Warehouse Company. The competing railroad systems, Baltimore and Ohio—Reading, in like manner obtained similar exclusive traffic privileges with other warehouse companies. The result is a rebating arrangement of the Pennsylvania System with its warehouse ally opposed or met by a similar rebating arrangement of the Baltimore and Ohio and Reading Systems with their warehouse allies. Each of those competing railroad systems used its rebating arrangement to obtain an undue share of the warehouse traffic of Philadelphia. Possibly the facts would be more accurately stated if we said that the effort

of the Baltimore and Ohio was directed to retaining its fair share of the warehouse freight traffic against the unfair encroachment of the Pennsylvania System. The Pennsylvania did not give rebates to the Baltimore and Ohio allies and the Baltimore and Ohio did not give rebates to the Pennsylvania ally. The foregoing statements present an allowance or rebating practice in the case at bar differing materially from the allowances by each of the several trunk lines to Arbuckle Brothers which obviously could not result in any one of the competing trunk lines obtaining an undue share of the Arbuckle traffic. This Court subjected the contracts and allowances in the *Arbuckle Case* to a test which revealed good faith and not a cover for a fraudulent scheme to give rebates or other illegal advantage. 231 U. S. 291. A similar test, applied in the cases at bar, will disclose fraudulent scheme and the giving of unlawful rebates with resulting unjust discrimination. Further, this Court in the *Arbuckle Case* found that the services performed by the Franklin Sugar Refining Company were accessorial services, performed for the convenience of that company, for which the railroads were under no obligation to pay compensation. 231 U. S. 287. Adverting to rules 23 and 27 of the Freight Classification we submit that that conclusion applies with greater force to the allowances and alleged services under consideration in the cases in hand.

In *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, this Court approved the giving of allowances to an operator of grain elevators for elevating bulk grain at Omaha. Part of the tonnage elevated was owned by that operator and part of the tonnage was owned by other shippers. The allowances reviewed in that case were allowances to owners of property transported, as authorized in section 15 (13) of the Interstate Commerce Act. The contract warehouses assert that they do not own the freight which they handle and that they are not shippers. The

allowances received by our opponents, according to their argument, are not such section 15 (13) allowances but are compensation of railroad agents, that is, compensation for services performed by our opponents when they were acting as railroad agents and compensation for railroad use of their facilities. Our opponents cannot cite the *Diffenbaugh Case* to their advantage in preserving their exclusive right to such allowances and barring their non-subsidized competitors from receiving equivalent allowances. This Court and the Commission have held that when carriers give section 15 (13) allowances to one or more owners of property transported they cannot deny the equivalent in allowances for similar services to competing owners. *Union Pacific R. R.* v. *Updike Grain Company*, 222 U. S. 215. *Suffern Grain Co.* v. *Illinois Central R. R. Co.*, 22 I. C. C. 178.

While conceding that the unjust discrimination in the cases in hand could be abated through giving allowances to us similar to the allowances given to our subsidized competitors we have an abiding conviction that all such allowances are and would be unlawful rebates. The attempt to remove the unjust discrimination by giving such allowances to other shippers would be ineffectual unless and until railroad revenues were seriously impaired by the giving of similar allowances to compensate every shipper for loading or unloading his carload freight on his private side tracks and premises.

In the cases at bar allowances were not given on bulk commodities, this being shown in the parts of the contracts quoted in sections 3 and 7, ante.

Elevation of bulk grain requires the use of valuable facilities, machinery and power. Elevation is expressly made common carrier service by section 1(3) of the Interstate Commerce Act. Before mere manual labor performed in

loading or unloading the ordinary package freight handled by warehouse companies, on private premises of shippers, is made a common carrier service, compensible by allowances out of freight rates, that important matter deserves the consideration of Congressional committees and the Interstate Commerce Commission. The allowances approved in the *Diffenbaugh* case were applied to bulk grain in transit at an important transit point and not to grain in sacks at points of destination. As to the services alleged to have been performed in the cases in hand, the loading preceded the tendering of the shipments for transportation and the unloading succeeded transportation and delivery of the carload shipments on side tracks of the warehouses at destination of shipments.

In *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444, 446, this Court expressed the view that the *Diffenbaugh* case goes to the verge of what is permitted by the Interstate Commerce Act. Our opponents go much farther.

Coming now to the several cases cited by the contract warehouse companies in support of their assertion that carriers may select and appoint their agents and that they cannot be compelled to appoint others to act as such agents. That question, interpolated by our opponents, is not involved in this case. Not one of the non-contract warehouse companies has manifested desire to be agent of any common carrier. However, the cases cited in support of that extraneous question are easily distinguished. A railroad corporation can act in its private character as owner of property or its public character as a common carrier. The non-contract warehouse companies challenged the action of three railroad corporations in their capacity as common carriers involving transportation of freight and application of their published rates, to which the Interstate Commerce Act, which we invoked, applies. Our opponents

cite cases involving railroad corporations challenged as owners of property under statutes and ordinances, other than the Interstate Commerce Act, which do not involve freight rates and do not shed light on any principle involved in the cases at bar. Among the cases so cited are—*The Express Cases*, (1885), 117 U. S. 1; *Chicago, etc. R. Co.* v. *Pullman Car Co.*, (1891), 139 U. S. 79; *Donovan* v. *Pennsylvania Co.*, (1905), 199 U. S. 279; *Delaware, L. & W. R. R. Co.* v. *Morristown*, (1928), 276 U. S. 182; *Black & White Taxi Co.* v. *Brown & Yellow Taxi Co.*, (1928), 276 U. S. 518.

A person, complaining in his status as a property owner, against alleged unfair practices of a railroad company acting as a property owner cannot obtain relief under sections 2 and 3 of the Interstate Commerce Act because those sections are largely directed to transportation service and rates and are not intended to afford relief to property owners as such. *Pittwood* v. *Northern Pacific Ry. Co.*, 51 I. C. C. 535. But where a railroad company, as owner of land, leases or rents that land to a shipper at rent lower than the reasonable market rental value of the land, with purpose to offset and thereby reduce its rates for the transportation of the goods of that shipper below the published standard, that conduct is in violation of section 2 of the Interstate Commerce Act and section 1 of the Elkins Act. *C. C. C. & St. L. Ry.* v. *Hirsch*, 204 Fed. 849. The warehouse companies at Philadelphia, both contract and non-contract, and large manufacturers and wholesalers combine into shipping groups with purpose to ship goods in carload lots by railroad from points of manufacture or concentration to Philadelphia to be marketed there. The material effect of the freight rates, altered by the allowances, in barring or curtailing participation of the non-contract warehouse companies in these shipping groups

and their shipping activities has been stated and the facts clearly distinguish the cases at bar, which involve transportation service and rates, from cases involving only the rights and duties of railroad companies in their capacity as owners of property.

The St. Louis Terminal Case, 34 I. C. C. 453, is cited. In that case the Commission condemned special privilege and found that warehousemen are shippers. P. 462, 465. That case, as shown at page 462, turned largely on the decisions of this Court in the *Arbuckle* and *Diffenbaugh* cases which we reviewed in detail above.

Covington Stock Yards Co. v. *Keith* (1890), 139 U. S. 128, and *Western Stock Yards* v. *N. Y. Co. R. R. Co.*, 87 I. C. C. 4, have reference to the loading and unloading of live stock which requires pens etc., that is, costly facilities not needed or used in the loading or unloading of the package freight involved in the cases at bar. Section 15 (5) of the Interstate Commerce Act imposes special duties, in respect of loading and unloading of live stock, on the carriers and specifically provides that the compensation of the carriers for such loading and unloading services shall be included in their transportation rates. When the Congress, by express statutory provisions, dealt with elevation and with the loading and unloading of live stock that, as it seems to us, indicates that the loading and unloading of ordinary carload freight on private side tracks remains outside common carrier duty and is a trade service.

The cases at bar involve wilful and deliberate rebating based on traffic-buying contracts. In that respect they are easily distinguished from each of the cases cited by the contract warehouse companies.

CONCLUSION.

This Court in its recent decision in the private car case, in *Louisville & N. R. Co.* v. *United States,* decided February 25, 1931, said:

> "The legislative history of the Interstate Commerce Act shows clearly that the evil of discrimination was the principal thing aimed at. . . . This Court has said that the language of the Act is certainly sweeping enough to embrace all the discrimination of the sort described which it is within the power of Congress to condemn."

The inherent vices of the railroad rebate which lead to condemnation of rebating under English and American statutes were clearly stated by this Court in *New Haven Railroad* v. *Interstate Commerce Commission,* 200 U. S. 361, at 391-395. The natural effect of the railroad rebate in monopolizing a given kind of trade or industry in the hands of the participants in the rebating is shown in that case. That effect or result is definitely evinced in the record in the cases at bar. And large amounts of the revenues of three common carriers have been dissipated for many years in this wasteful and unlawful buying of warehouse traffic at Philadelphia. Such dissipation of railroad revenues by the giving of allowances out of freight rates was condemned by the Commission seventeen years ago. *The Five Percent Case,* 31 I. C. C. 351, 408.

If the conduct and practices described in the cases at hand were sanctioned either by the courts or the Commission then, in our judgment, enforcement of the Interstate Commerce Act, and the Elkins Act in the future will be as ineffectual as enforcement of the Volstead Act is reputed to be. And this at a time when the President of the United

States demands more effectual enforcement of Federal statutes.

For the reasons above set forth the judgment of the court below condemning the substantive offenses should be affirmed, and the appeal of the contract warehouse companies from that judgment, in cases Nos. 635, 636, 638, 639, 641 and 642, should be dismissed; and the order of the court below granting a temporary stay of the order of the Commission should be reversed, and the cross-appeal of the United States, the Interstate Commerce Commission, and the non-contract competitors from that order, in cases Nos. 637, 640 and 643, should be sustained.

Respectfully submitted,

JOHN J. HICKEY,
Counsel for
James Gallagher,
Northeastern Warehouse Company,
Walter A. Bailey,
Terminal Warehouse Company,
Rex & Company, Inc.,
Industrial Cold Storage and Warehouse Company.

APPENDIX A.

Contracts of Pennsylvania Railroad Company,

Warehouses operated by Merchants Warehouse Company. (R. 570.). Served on private sidings connecting with lines of the Pennsylvania Railroad Company. (R. 570, 745-763.)

Names of Warehouses	*Railroad Ownership*	*Dates of Contracts*	*Record Reference*
Federal Stores	Note 1	July 3, 1918	485-493
Kensington Stores	Note 1	July 1, 1916	502-510
15th and Carpenter St. Strs.	Note 1	July 1, 1916	510-518
31st and Chestnut St. Strs.	Note 1	July 1, 1916	518-526
Shackamaxon Stores	Note 2	July 1, 1916	494-502
River Front Stores		Jan. 25, 1917	455-461
Webb Warehouse		Jan. 25, 1917	455-461
Franklin Stores		Jan. 28, 1927	462-467
Bainbridge Stores		Apr 10, 1922	467-477
Kenilworth Stores		Mar. 4, 1925	477-485

Notes

Note 1—The grounds, buildings and side tracks are owned by the Pennsylvania Railroad Company, or one of its subsidiary companies. (Richardson, R. 391.) Also stated in the contracts.

Note 2—The ground underlying the warehouse and the side tracks is owned by the Pennsylvania Railroad Company or one of its subsidiary companies. (Richardson, R. 391.) Also stated in the contracts.

Contracts of the Reading Company,

Warehouses operated by the Pennsylvania Warehousing & Safe Deposit Company. (R. 570.) Served by private sidings connecting with the lines of the Reading Company. (R. 570.)

Names of Warehouses	*Railroad Ownership*	*Dates of Contracts*	*Record Reference*
16th St. Stores	Note 3	Jan. 12,1897	603-638
		Jan. 31, 1908	708-709
		Dec. 12. 1909	
Port Richmond Stores	Note 3	Jan. 2, 1902	639-663
Delaware Ave Stores 1, 2, 3, and 4		July 9, 1898	622-623
Tobacco Warehouse		July 9, 1898	622-623
West Indies Stores		July 9, 1898	622-623
Pennsylvania Stores		July 9, 1898	622-623
Atlantic Stores		July 9, 1898	622-623
Moro Phillips Stores		July 9, 1898	622-623
Poplar St. Stores		July 9, 1898	622-623

Notes

Note 3.—The ground, buildings and side tracks are owned by the Reading Company, as stated in the contracts.

CONTRACT OF THE READING COMPANY,

Warehouse operated by the Philadelphia Warehousing and Cold Storage Company. (R. 570, 764-774.) Private sidings connecting with the lines of the Reading Company.

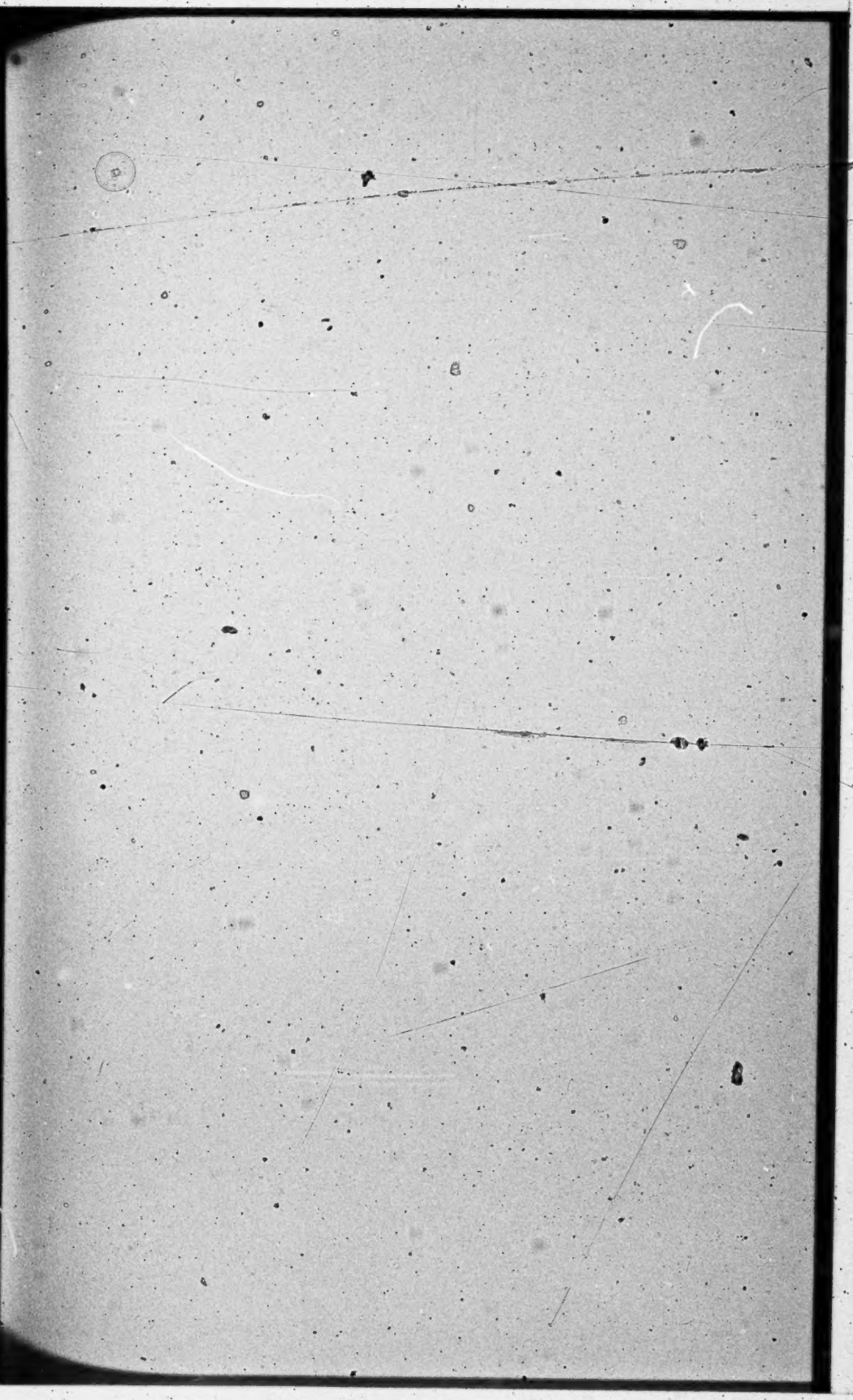
Name of Warehouse	*Railroad Ownership*	*Dates of Contracts*	*Record Reference*
Delaware Ave and Noble St.	Note 1	Nov. 4, 1898 Apr. 20, 1909	664-692

Notes

Note 1.—The Reading Company owns the land underlying a portion of this group of cold storage warehouses.

CONTRACTS OF THE BALTIMORE AND OHIO RAILROAD COMPANY, Warehouses operated by the Pennsylvania Warehousing and Safe Deposit Co. (R. 570.) Served by private sidings connecting with the lines of the Reading Company and Philadelphia Belt Line Railroad. (Ex. 102, pp. 79-85.)

Names of Warehouses	*Railroad Ownership*	*Dates of Contracts*	*Record Reference*
23rd St. Stores		Apr. 10, 1897 Mar. 31, 1902 Aug. 22, 1904 Aug. 2, 1926	711-730 734-739
Delaware Ave Stores 1, 2, 3, and 4		July 1, 1911	730-733
Tobacco Warehouse		July 1, 1911	730-733
West Indies Stores		July 1, 1911	730-733
Pennsylvania Stores		July 1, 1911	730-733
Atlantic Stores		July 1, 1911	730-733
Moro Phillips Stores		July 1, 1911	730-733



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CHARLES ELMORE C

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Nos. 635, 636, 637, 638, 639, 640, 641, 642, and 643

In the Supreme Court of the United States

OCTOBER TERM, 1930

MERCHANTS WAREHOUSE COMPANY, APPELLANT, *v.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS, *v.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND JAMES GALLAGHER, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL., APPELLANTS, *v.* MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, APPELLANT, *v.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, ET AL., APPELLANTS, *v.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND WALTER A. BAILEY, ET AL.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, ET AL., APPELLANTS, *v.* THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' EXCHANGE OF PHILADELPHIA

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, APPELLANT, *v.* THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, AND REX & COMPANY, INC., ET AL.

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APPEALS AND CROSS-APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 635

MERCHANTS WAREHOUSE COMPANY, APPELLANT

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and James Gallagher, et al.

No. 636

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, PHILADELPHIA BOARD OF TRADE, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and James Gallagher, et al.

No. 637

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Walter A. Bailey, et al., appellants

v.

MERCHANTS WAREHOUSE COMPANY, THE COMMERCIAL EXCHANGE OF PHILADELPHIA, GROCERS' & IMPORTERS' EXCHANGE OF PHILADELPHIA, et al.

No: 638

THE PENNSYLVANIA WAREHOUSING AND SAFE DEPOSIT COMPANY, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 639

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the Commercial Exchange of Philadelphia, Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and WALTER A. BAILEY, et al.

No. 640

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, WALTER A. BAILEY, et al.,

v.

THE PENNSYLVANIA WAREHOUSING & SAFE DEPOSIT COMPANY, the Commercial Exchange of Philadelphia, Grocers' Exchange of Philadelphia, et al.

No. 641

THE PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, appellant

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and REX & COMPANY, INC., et al.

No. 642

PHILADELPHIA WAREHOUSING & COLD STORAGE COMPANY, the Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., appellants

v.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Rex & Company, Inc., et al.

No. 643

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, and Walter A. Bailey, et al., appellants

v.

THE PHILADELPHIA WAREHOUSING & COLD STORAGE Company, the Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia, et al.

APPEALS AND CROSS APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

OPINIONS BELOW

The opinion of the specially-constituted District Court (R. 30) is reported in 44 Fed. (2d) 379. The

court's findings of fact and conclusions of law appear at R. 58–63. Opinion granting stay order appears at R. 91. The report of the Interstate Commerce Commission (R. 142) is reported in 160 I. C. C. 563.

QUESTIONS PRESENTED

The first question is whether the appellants have standing to maintain an independent suit to set aside the Commission's order.

On the merits the principal question is whether the Commission's order, which requires the three trunk-line railroads serving Philadelphia to cease paying allowances to appellants in order to remove unjust discrimination, undue preference of appellants, and undue prejudice to the complainants in the Commission proceeding, is within the Commission's power and otherwise valid, the subordinate questions in that connection being:

I. Whether appellants are shippers, that is, "persons" within the meaning of that term as employed in sections 2 and 3 of the Interstate Commerce Act, for whom the transportation of property at lower rates than those charged for similar transportation for complainants constitutes discrimination in violation of those sections.

II. Whether appellants' warehouses are operated as public freight stations of the carriers.

III. Whether the Commission's finding that the payment of the allowances to appellants results in unjust discrimination in their favor and undue

prejudice against the complainant warehouse companies is supported by substantial evidence.

IV. Whether, even if the services appellants perform are transportation services, the payment by the carriers of allowances to them and the withholding of allowances to complainants for similar services is an "undue" discrimination.

V. Whether the Commission, having found that the services performed by appellants and complainants were not "transportation" services but instead were warehouse trade services, properly required the carriers to remove the discrimination by stopping the allowances to appellants rather than continuing to pay them to appellants and extending them to complainants and all others similarly circumstanced.

On the cross appeals the question is whether the court below erred in staying the operation of the Commission's order pending appeal.

STATUTES INVOLVED

The pertinent provisions of the Interstate Commerce Act and the Elkins Act are set forth in the Appendix, pages 94–105.

STATEMENT

These are appeals from a final decree of the court below (R. 95) dismissing, for want of equity, separate petitions filed by the appellants in Nos. 635, 638, and 641 to enjoin and set aside the order (R. 151) entered by the Interstate Commerce Com-

mission December 28, 1929, in a proceeding entitled *James Gallagher et al.* v. *Pennsylvania Railroad Company*, which also embraced *Walter A. Bailey et al.* v. *Baltimore & Ohio Railroad Company* and *Rex & Company, Incorporated, et al.*, v. *Reading Company*, Nos. 20968 and sub-Nos. 1 and 2, and cross-appeals from orders of the court staying the operation of the Commission's order pending appeal.

The order requires the three carriers, defendants in the Commission proceeding, to cease paying allowances to appellants[1] in connection with the loading and unloading of package freight at Philadelphia and to cancel their tariff provisions which publish the allowances or which make any of appellants' warehouses a part of their station facilities at Philadelphia.[2]

The order was made in a proceeding begun by the filing of three formal complaints (R. 112, 117, 120), pursuant to section 13(1) of the Interstate Commerce Act, by six warehousemen,[3] hereinafter

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[1] Unless indicated to the contrary, the term appellants as used herein will refer to the Merchants Warehouse Co., the Pennsylvania Warehousing & Safe Deposit Co., and the Philadelphia Warehousing & Cold Storage Co., appellants in Nos. 635, 638, and 641.

[2] The order also requires the Pennsylvania R. R. Co. to stop paying allowances to the Quaker City Cold Storage Co. That Company did not join in the suit to enjoin the Commission's order. Nor did any of the carriers join in the suits. (R. 36.)

[3] James Gallagher, Walter A. Bailey, Rex & Company, Inc., Terminal Warehouse Co., Northeastern Warehouse Co., Industrial Cold Storage & Warehouse Co.

called complainants, engaged in the operation of warehouses in Philadelphia at and from which they ship and receive, load, unload, store, distribute, and deliver in small quantities, carloads of merchandise, known as package freight—including practically all commodities except freight in bulk and automobiles—which they have previously solicited for such handling from their customers located generally in cities outside of Pennsylvania. For those services they collect from their customers certain warehouse rates and charges.

Appellants operate in Philadelphia, in keen competition with complainants, the same type of warehouses and render the same kind of services generally. Their charges vary according to the nature of the merchandise handled, but are usually at a stated sum per package per month, frequently with a labor or handling charge in addition, and their charges include such services as "unloading car, placing in storage, and delivering either to car or tailboard of truck, making out bills of lading and addressing for shipment," notifying the patron's customers "promptly upon arrival of cars, thus enabling them to withdraw their merchandise immediately, if desired," and other services. (Exs. 2 and 3[1]; Ex. 6, R. 549–555; Ex. 41; Exs. 42–47, R. opp. 596; Ex. 49; Exs. 50–51, R. opp. 598.)

[1] Where no record page reference is given herein following exhibit numbers, the exhibits will be found in "Volume of Exhibits Physically Reproduced."

Each of the complainants' warehouses and each of the appellants', except four, is served by an industrial side track connecting with one or more of the three Philadelphia railroads. (Exs. 35 and 36, R. 570–571.)

The complaints filed with the Commission alleged that each of the complainants and each of the appellants "in the conduct of his or its warehouse business, shipped numerous carloads, and smaller lots, of property outbound from their warehouses in said Philadelphia to various points outside the state of Pennsylvania and tendered said property" to the carriers for transportation and "caused numerous carloads, and smaller lots, of property to be shipped from various points outside the state of Pennsylvania to said Philadelphia and to be delivered to them" by the carriers in Philadelphia. (R. 114–115, 118, 123.) The complaints further alleged, in substance, that the respective carriers, at the time they transport property for complainants and appellants, collect their published rates but that later, by means of the allowances, which are devices for granting the appellants special rates, rebates, drawbacks, and concessions, they refund and remit to appellants part of said published rates, with the result that they transport property for appellants at net rates that are materially less than their published rates, by reason of which complainants are subjected to the payment of rates and charges for transportation which are unjustly discriminatory,

unduly preferential of appellants and unduly prejudicial to complainants, in violation of sections 2 and 3 of the Interstate Commerce Act. (R. 115–116; 119; 123–124.)

The warehouses operated by both complainants and appellants are of the type known as "merchandise" warehouses, as distinguished from those engaged in long term storage of such articles as household goods or furniture. Their principal functions are (1) the maintenance of "spot stocks" for manufacturers and others; (2) the receipt of merchandise shipped to them in carload lots and the immediate or subsequent distribution thereof in small or less-than-carload quantities in Philadelphia and in adjacent territory. Many of their customers are nationally-known manufacturers or producers of such commodities as soap, rubber products, canned goods, coffees, cereals, etc., whose factories are located in various cities throughout the country and who regularly use merchandise warehouse service in marketing and distributing their goods in Philadelphia and other large cities. (Exs. 2 and 3; Ex. 4, R. 531–548; Ex. 5, R. 548–549; Ex. 6, R. 549–555; Exs. 12 and 13, R. 558–562; Exs. 14 and 19–29, R. opp. 562; Exs. 15, 16, 17, 18; Ex. 30, R. 563–565; Ex. 41; Exs. 42–47, R. opp. 596; Ex. 48, R. 597; Ex. 49; Exs. 50–51, R. opp. 598.)

Exhibit No. 18, an official publication of the United States Department of Commerce, entitled "The Merchandise Warehouse in Distribution,"

gives a full description of the operation of warehouses of the type here involved; and it was not denied that this publication accurately describes the business of both the appellant and complainant warehouses. (R. 274–275.)

A brief résumé of the services they render is given in the Commission's report:

> In all the larger cities, including Philadelphia, public warehouses are customarily used for the receipt, storage, and distribution of merchandise. That these warehouses perform an important public service is indisputed. The merchandise warehouse receives goods in carloads and distributes them in smaller quantities to local jobbers or retailers, or reships them in less-than-carload lots to near-by destinations; issues negotiable and nonnegotiable receipts, provides insurance, and allows credit to be obtained on merchandise stored; provides recoopering, marking, and separation of varieties, and various incidental clerical services. Warehouse services enable manufacturers to keep spot stocks for their customers; equalize production by steadily absorbing the manufacturers' output while eliminating heavy investment in reserve storage space; reduce freight charges and save time in transit through handling goods in carload quantities; reduce fire risk and loss and damage claims; and eliminate the necessity of providing storage space at point of origin.

> Both complainants and the contract warehouses [appellants] furnish these services. (Report, p. 564, R. 144.)

An important reason for the employment of these warehouses is the fact that by doing so the application of the carload rate is obtained, whereas if the distribution in small quantities were made by the manufacturer, wholesaler, or shipper direct, the high less-than-carload rate would apply.

From an early date it has been the general practice of railroads to fix a lower rate for a carload than for a less-than-carload, and the difference or "spread" between the two rates is substantial. (Ex. 39, R. 596.) But the carriers enforce rules to prevent the application of the carload rate when they are called upon to perform greater service than normal carload service. These are Rules 14 and 23 of the Consolidated Freight Classification (Ex. 33, R. 567).* Rule 14 provides that carload rates apply only when a carload of freight is shipped from one station, in or on one car, in one day, by one shipper for delivery to one consignee at one destination. Only one bill of lading from one loading point and one freight bill shall be

*This is a consolidation of the three classifications formerly published as separate issues—the Official, the Southern, and the Western. Compare *Int. Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S. 235, 241. The Consolidated Classification now applies throughout the United States on interstate traffic. It is, of course, filed with the Commission under section 6 of the Interstate Commerce Act, and has the same binding force as all tariff schedules.

issued for such carload shipment. Rule 23 forbids the carriers' agents to act as agents of shippers or consignees for the assembling or distribution of carload freight, directs that agents at points of shipment must not accept freight to be carried at carload rates for distribution to two or more parties by carriers' agents at points of destination, directs that agents at points of destination must deliver freight carried at carload rates to one consignee only and must not accept orders from shippers or consignees calling for split deliveries according to brands, marks, sizes, or other identification of packages, and provide that if, at the request of the owner of the property or his authorized agent, a carload shipment is delivered to more than one consignee, less-than-carload rates will be applied on the entire shipment.

Under these rules the carload rates cannot be obtained upon carload consignments intended for distribution in small or less-than carload quantities at point of destination unless some one other than a railroad agent is employed to accept the shipment from the railroad *as a carload* and attend to the distribution.

The merchandise warehouse is employed for this purpose. It is also employed to assemble small quantities of goods and forward them in carload lots. The fact that this saving in transportation costs can be effected through utilization of the services of these warehouses largely accounts for their existence.

Both appellants and complainants obtain business by widespread advertising in prominent trade publications, by sending letters, pamphlets, and circulars to prospective customers, offering them their services, and by personal solicitation.* By these means, they induce manufacturers, wholesalers, and producers to ship their products to them, in carload lots, for distribution, storage, or other warehouse trade storage. (R. 269.) The inbound, carload traffic constitutes the major portion of their business. (R. 275, 442.) The shipments are usually consigned to a named party "in care of" the warehouse at which the carrier is to make delivery. (R. 189, 233, 306, 279, 283.) When such a carload arrives at Philadelphia, notice of arrival in the regular form is given by the carrier to the warehouse (R. 327, 350, 371; 422-423; Exs. 80 and 96), and thereafter delivery is made by placing the car upon the warehouse side-track. The unloading is performed by warehouse em-

* Appellants. Merchants Warehouse Co.: Ex. 2; Ex. 3; Ex. 4, R. 531, 544; Ex. 6, R. 549–555; Ex. 12, R. 558–560; R. 187–189, 194. Pennsylvania Warehousing & Safe Deposit Co.; Ex. 41; Exs. 42–48, R. opp. 596; 304; Philadelphia Warehousing & Cold Storage Co.: Ex. 49; Exs. 50 and 51, R. opp. 598.

Complainants. Terminal Warehouse Co.: Ex. 14, R. opp. 562; Exs. 15, 16, 17, 18; Exs. 19–29, R. opp. 562; R. 267–275. Northeastern Warehouse Co.: Ex. 8; R. 218, 219; James Gallagher: Ex. 41; R. 251–254. Walter A. Bailey: R. 202–218. Rex & Co., Inc.: R. 243–246. Industrial Cold Storage & Warehouse Co.: R. 234–240. All complainants: Ex. 13, R. 560–562.

ployees, and the warehouse stores, distributes, or reships in less-than-carload quantities, in accordance with the instructions of the shipper or owner. (R. 189, 192, 305, 311; 203–204; 220, 236–237, 270–273, 278–279.)

When an outbound carload shipment is to be made by the warehouse, it orders an empty car and thereupon the railroad "spots" the car upon the warehouse side track. (R. 385.) The goods are loaded into the car by the warehouse (R. 385), bill of lading is obtained from the railroad agent (R. 386), and the car goes forward, as directed by the warehouse.

Many of the outbound less-than-carload shipments are transported from the warehouse in "ferry" or "trap" cars.[7] (R. 443; Ex. 6, R. 553, 555; Ex. 37, R. 572.)

It is upon such shipments that the carriers pay allowances to appellants. These allowances differ in amount and application according to the traffic.

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[7] As explained in *Trap or Ferry Car Service Charges*, 34 I. C. C. 516, the term trap or ferry car is applied to a car placed at an industry or commercial house having a private siding, and there loaded by a shipper with less-than-carload shipments, and hauled by a carrier to its local freight or transfer station for handling and forwarding of contents. It is also applied to a car loaded with less-than-carload shipments which is hauled to and placed upon the private track of an industry or commercial house by the carrier from a local or transfer station. The use of such cars saves the shipper the expense of draying his l. c. l. shipments to the carrier's freight station, *ibid*, 521.

In certain instances they are applied to both carload and less-than-carload shipments, inbound and outbound, and in other instances they are given only on inbound carload shipments. They range from 2.5 cents per barrel on flour to 50 cents per ton on other freight. (Ex. 7, R. 556; R. 304, 309.) They are not paid by the carriers to all the appellants but only to the particular ones with which they have entered into contracts. (R. 447.) The Pennsylvania gives allowances on all freight handled by the Merchants Warehouse Co., inbound and outbound, carloads, and less-than-carloads. (R. 442.) The Baltimore & Ohio gives allowances to the Pennsylvania Warehousing & Safe Deposit Co. on carload freight inbound and outbound but none on less-than-carload freight. (R. 302–304, 401.) The Reading gives allowances to the Pennsylvania Warehousing & Safe Deposit Co. and the Philadelphia Warehousing & Cold Storage Co. on inbound carload freight but none on outbound carload freight and none on less-than-carloads. (R. 302–304, 364, 400.)

The aggregate of the allowances paid is substantial. At the Commission hearing a witness for the Merchants Warehouse Co. estimated that the total amount paid his company by the Pennsylvania for the year 1927 was approximately $200,000. (R. 393.) At the preliminary hearing in the court below the exact figures were given for 1926–1929.

The allowances received by the three appellants from the three railroads during that four-year period aggregated $809,543.56. (R. 179–180.)

The conditions under which the allowances are given are set forth in several written agreements between the carriers and the appellants.[4] (Ex. 1, R. 455–526; Exs. 53–57, R. 603–692; Ex. 86–88, R. 711–739.) The practice of the carriers of making such contracts with particular warehouse companies at Philadelphia originated many years ago. The practice is not generally followed elsewhere by the carriers. (R. 341, 446.) Many of the warehouses operated by appellants are owned by them; others are leased from the railroads, and where this is the case, the contracts above mentioned also cover the letting of the property, the amount of the rental, etc.

The allowances made by the Pennsylvania are published in tariff form (Exs. 62, 98, R. 698–704, 739–743), but neither the B. & O. nor the Reading has filed tariffs covering the allowances they pay to their contract warehouses. (R. 361, 368.)

No allowances are paid by the carriers to any of the complainants. The Commission found, how-

[4] These contracts constitute part of the evidence supporting the Commission's finding that "traffic considerations have been the primary motive for the payment of the allowances," and further reference will be made to them in part V hereof, under the subheading "The allowances are given in consideration of the appellants causing their traffic to be routed over the lines of the respective carriers," pages 79–87.

ever, that the complainants perform the same services as appellants:

> The services performed by the contract warehouses do not differ in substance from those rendered by complainants. The warehouses of complainants and those of the contract warehouses are served by private sidetracks or sidings connecting with the lines of one or more defendants. Both handle the same classes of freight and both obtain business by widespread advertising in prominent trade publications, by sending letters, pamphlets, and circulars to prospective customers offering them their services, and by personal solicitation. There is active and keen competition between complainants and the contract warehouses. Concerns using public-warehouse facilities generally select the company offering them the lowest aggregate charge [made up of the railroad freight rate to the warehouse and the warehouse charge, R. 276] for the distribution of their goods. By means of the allowances the contract warehouses are able to quote lower charges than can complainants. (Rep., p. 566, R. 146–147.)

In defending the case before the Commission the carriers, and appellants who had intervened as defendants, rested the defense upon grounds briefly summarized at page 567 of the Commission's report, as follows:

> Defendants take the position that under their tariffs they are required to load and

unload carload and less-than-carload package freight at Philadelphia; that they lawfully employ the contract warehouse as agents to perform these loading and unloading services, and that the allowances paid therefor are compensation for such services; that there is no legal obligation on the part of defendants to make complainants' warehouses their stations or to employ complainants as their agents to load and unload freight; that the contract warehouses are neither consignors nor consignees of the freight handled by them; and that the allowances paid to such warehouses, being for transportation services rendered, are not illegal. The contention of the contract warehouses and interveners in behalf of defendants are similar to those of defendants.

Rule 27 of the Consolidated Classification provides:

> Owners are required to load into or on cars freight for forwarding by rail carriers, and to unload from cars freight received by rail carriers, carried at carload ratings. (Ex. 33, R. 568.)

By exceptions to Rule 27, however, the railroads agree to load or unload package freight at some but not all of their Philadelphia freight stations, except when handled direct to or from cars on team tracks at owner's request. (Ex. 61, R. 697; Ex. 82, R. 708; Ex. 85, R. 710.) A tariff of the Pennsylvania (Ex. 59, R. 693–695) provides that these stations include the "facilities" of the Merchants

Warehouse Company. Another tariff of the Pennsylvania (Ex. 60, R. 696) provides that the Merchants' warehouses will be considered freight stations during the free time in the application of storage rules and charges as published in Agent B. T. Jones' I. C. C. 1491. (See R. 447.) A tariff of the B. & O. (Ex. 85, R. 710-711) provides that carload freight handled at four of the Pennsylvania Warehousing & Safe Deposit Company's warehouses will be subject to the same rules and regulations as to loading and unloading as are in effect at Pier 62, which is one of the seven stations at which it will load and unload carload package freight. The Reading Company, though paying allowances to the Pennsylvania Warehousing & Safe Deposit Co. on carload shipments to all its warehouses, (R. 303) has not provided in its tariffs that those warehouses are its freight stations or that they will be considered such for any purpose. Nor has the Reading published any such tariff provisions in support of its allowances to the Philadelphia Warehousing & Cold Storage Co. (R. 309.)

Complainants urged before the Commission, among other things, "that the allowances are in fact rebates given for the purpose of buying freight traffic controlled by the contract warehouses and causing it to be transported over defendant's lines; that the facilities of the contract warehouses are not railroad freight stations or used by the general pub-

lic as such; that the contract warehouses are the actual shippers of the freight handled by them; that the contract warehouses do not perform any task for defendants that entitle them to receive allowances; and that the loading and unloading of freight by the contract warehouses is not in fact transportation service and that allowances therefor, being for trade services, are illegal." (Rep. p. 566, R. 147.)

The Commission said there is much conflicting testimony in the record with respect to the foregoing contentions, but that the weight of the evidence supports those advanced by complainants. "Among other things," the Commission said, "the record is persuasive that—

> "the contract warehouses are compensated for the solicitation of freight for movement over the lines of the respective defendants through the payment of the allowances in question; that traffic considerations have been the primary motive for the payment of these allowances; that the facilities of the contract warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations but are confined to the handling of merchandise for the patrons of the warehouses; and that the services performed by the contract warehouses in connection with the loading or unloading of freight, including the sending of arrival notices, the collection of freight charges, and other incidental matters, are

in fact performed for the benefit of the owner of the merchandise, rather than for defendants.

"While the contract warehouses are not the owners of the goods received or shipped by them, all of defendants' dealings are with these companies and none with the owners of the goods. As to many of the inbound carload shipments the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to the contract warehouses for distribution in less-than-carload lots. The contract warehouses, even though not the owners of the goods, have been given dominion over such goods for transportation purposes, and accordingly for transportation purposes they should be deemed the consignors of shipments from or consignees of shipments to their warehouses. The same is true as to complainants, shipments from and to their warehouses being handled in substantially the same manner." (Rep. 567, R. 147–148.)

The Commission's ultimate finding was as follows:

Following *McCormick Warehouse Co.* v. *Pennsylvania R. Co., supra,* and upon this record, we find that the practice of defendants in making allowances to the contract warehouses in connection with the loading or unloading of package freight at Philadelphia as aforesaid, and refusing to make

> similar allowances to complainants, for performing similar services, results in unjust discrimination, in undue preference of the contract warehouses, and in undue prejudice to complainants. (Rep. 569, R. 150.)

There were two methods by which the discrimination and prejudice thus found could conceivably be corrected, first, by extending to complainants similar allowances for the similar services they performed; second, by elimination of the allowances to the contract warehouses. The Commission adopted the second method because it found that the services in question were not rendered for the railroads but were warehouse trade services rendered by both the contract and complainant warehouses for their patrons and that the payment of such allowances amounted to unlawful rebates. In this connection the Commission said:

> The record discloses that these allowances are nothing more than a device to attempt to lend legality to the payment of rebates to the contract warehouses. It is apparent that the unjust discrimination and undue prejudice can lawfully be corrected only by terminating the allowances. Defendants will therefore be required to cease and desist from publishing or making such discriminatory and preferential allowances. The Pennsylvania and the Baltimore & Ohio will also be required to cancel their tariff provisions which make the facilities of the con-

tract warehouses a part of the respective station facilities of these defendants at Philadelphia. (Report, page 569, R. 150.)

The report and order of the Commission were made by Division 3, Commissioners Aitchison and Porter. Petitions for rehearing by the full Commission were filed pursuant to sections 16a and 17(4) of the Act (R. 153, 156, 160, 167), and the matter received consideration by the full Commission, which denied the petitions (R. 177–178).

In the earlier case, *McCormick Warehouse Co.* v. *Pennsylvania R. R. Co.*, 148 I. C. C. 299, the Commission found discriminatory and unlawful the payment of allowances to a particular warehouse company at Baltimore under a state of facts practically identical with those in the case at bar. Its order in that case was upheld by the specially-constituted District Court for the District of Maryland (Circuit Judge Parker and District Judges Soper and Coleman), *Terminal Warehouse Company of Baltimore City* v. *United States*, 31 Fed. (2d) 951. No appeal was taken to this court in that case.

Proceedings in court below

The court below found and concluded that the payment of the allowances by the railroads, in accordance with the contracts, is unlawful in that it subjects the complaining warehouses to unjust discrimination in favor of the contract warehouses, gives an undue and unreasonable preference and

advantage to the contract warehouses, and subjects the complaining warehouses to an undue and unreasonable prejudice and disadvantage; that the allowances paid to the contract warehouses are unlawful as rebates; that the order of the Commission is in all respects a lawful order, and that the petitions should be dismissed. (See court's findings of fact and conclusions of law, R. 58–63.)

Final decree, dismissing the bills for want of equity, was entered November 19, 1930. (R. 95.)

Shortly after the rendering of the court's opinion on October 8, 1930 (Circuit Judge Buffington dissenting), petitions were filed for stay of the Commission's order pending appeal to this court. (R. 67, 857.) The United States, the Commission, and the six complainants, who had intervened in the court proceedings, filed answers in opposition. (R. 76, 81, 88, 860, 865.) November 19, 1930, the court rendered a supplementary opinion granting the petitions for stay (R. 92) and in its orders allowing the appeals of the three petitioners (R. 105–106; 821–822; 878–879) stayed the operation of the Commission's order pending the determination of the appeals by this court. From these stay orders cross appeals (Nos. 637, 640, 643) have been taken. (R. 108, 824, 881.)

The Commission's order was issued December 28, 1929, to become effective February 10, 1930. It's effective date was postponed by the Commission until February 25, 1930. (R. 9, 177.) Before it became effective, on February 21, 1930, the court,

after taking testimony showing the amounts of the allowances paid by the railroads to the appellants (R. 179–180), issued a temporary stay of the operation of the Commission's order for a period of sixty days (R. 18). April 15, 1930, the court extended that temporary stay until the further order of the court. (R. 29.) As a result of the various stay orders, the order of the Commission has not yet gone into effect.

SUMMARY OF ARGUMENT

STANDING TO MAINTAIN SUIT

I. None of the three railroads against whom the Commission's order is directed joined in the suits to set aside the order. The appellants have no standing to maintain an independent action for that purpose, for they have not shown that the order will deprive them of a legal right of their own. The order deprives them of only an economic advantage over their competitors equal to the amount of the allowances, given them by the carriers, not for "transportation" services performed, but only in consideration of their routing their traffic over the lines of the carriers giving the allowances. The effect of the order is only to require that their traffic be transported at rates equal to that of their competitors, without any refund, rebate or allowance. *Sprunt & Son* v. *United States*, 281 U. S. 249.*

* Decided Apr. 14, 1930, after these cases were heard and submitted to the court below on March 28, 1930, R. 2.

ON THE MERITS

I. The appellants and complainants, engaged as operators of merchandise warehouses, whose business it is to receive carloads of merchandise shipped to them for distribution or other warehouse trade services, and to forward shipments for others from their warehouses, in order to obtain the lower carload rates, are "persons" within the meaning of that word as employed in sections 2 and 3 of the Interstate Commerce Act and other acts regulating commerce. They are in the same category as "forwarding agents," who from an early date have been held to be "shippers" subject to those statutes. *Interstate Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S. 235; *Great Northern Ry. Co.* v. *O'Connor*, 232 U. S. 508; *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444. The allowances are paid to appellants only on shipments to and from their warehouses in connection with which they are employed by their customers to perform some warehouse service—business which they have obtained by their advertisements and solicitation. The fact that the shipments are billed in their care instead of to them by name is immaterial, for it is shown that the names used in the billing are those which the appellants themselves suggest. It is well settled that the actual situation underlying a shipment rather than recitals in the shipping documents control the application of the Acts of Congress. *D., L. & W. case, supra*, at pages 242–243; *United States* v. *Koenig Coal Co.*, 270 U. S. 512; *United*

States v. *Metropolitan Lumber Co.*, 254 Fed. 335; *B. & O. S. W. R. R.* v. *Settle*, 260 U. S. 166; *Penna. R. R.* v. *Clark Coal Co.*, 238 U. S. 456, 466.

It is unnecessary to determine whether appellants and complainants are technically "consignors" or "consignees" of the shipments to and from their warehouses, for sections 2 and 3 of the Act do not use those terms, nor the term "owner," but forbid carriers to discriminate against "any person" in respect of transportation. Hence, transportation of property for appellants at net rates lower than those charged for similar transportation for complainants, constitutes unjust discrimination in violation of the Act and within the jurisdiction of the Commission to correct.

II. Appellants' warehouses are not operated or used as public freight stations of the carriers. Appellants are engaged in the operation of storage and distribution warehouses located upon private premises, served by private sidetracks of the carriers. Their advertisements and letters of solicitation show their function in furnishing storage and distribution services to manufacturers, merchants and shippers, rather than the performance of common carrier duties. Appellants' assertion that they act as agents of the carriers in the operation of railroad freight stations is negatived by the fact that they are employed to assemble and distribute carload freight, to obtain the carload rate, which assembling and distribution work can not lawfully

be done by railroad agents at railroad stations because of the restrictions of classification rules 14 and 23. Printed circulars of instructions issued by the carriers list the appellants's warehouses as private business enterprises served on private sidetracks, and not as public freight stations. Shipments tendered at appellants' warehouses for transportation over the Pennsylvania Railroad were refused on the ground that the warehouses were not freight stations. Appellants are not authorized to issue bills of lading on behalf of the carriers. These facts differentiate the *Arbuckle case, United States* v. *B. & O. R. R.*, 231 U. S. 274. The Commission's finding of fact that the appellants' warehouses are not in fact open public freight stations of the railroads was sustained by the court below as supported by substantial evidence, and the statutory court in *Terminal Warehouse Co. of Baltimore City* v. *United States*, 31 Fed. (2d) 951, made the same finding under similar facts.

III. The Commission's finding that the payment of allowances to the appellants results in unjust discrimination and undue prejudice against the complainant warehouses is amply supported by substantial evidence. Voluminous evidence established that appellants and complainants are competitors in the merchandise warehouse business; that complainants have suffered prejudice which has been a source of positive advantage to the appellants; that the allowances have been used to divert business from complainants to appellants;

that the latter have been able to underbid complainants for new business, and to take customers away from complainants; that complainants have been compelled to reduce their normal warehouse charges in order to hold some of their customers under the disadvantage of the allowances, and, because of them, have never been able to obtain a fair proportion of the warehouse and distribution business in Philadelphia; that appellants have used the allowances for many years to build up their business and to suppress the development of the business of complainants, and when the allowances are eliminated the complainants will continue to suffer from the disadvantage because appellants will have the established trade, built upon the allowances, and it will require years for complainants to recover their fair share of the competitive merchandise warehouse business.

The backbone of the business of these merchandise warehouses in the traffic of large manufacturers that customarily use warehouse distribution service in marketing and distributing their goods in Philadelphia and other large cities. Illustrative of the similarity of the business of appellants and complainants is the fact that sometimes a large manufacturer will carry his "account" with a complainant warehouse and at other times with an appellant. When the account of such a manufacturer is carried with an appellant warehouse, the transportation service performed and the circumstances and condition surrounding the trans-

portation are not different than when the account is carried with a complainant warehouse. In either case the carrier transports the shipment and makes delivery upon the sidetrack of the warehouse which unloads, stores or distributes in accordance with the instructions of the shipper, paying or collecting the freight charges, sending notices of arrival to the shipper's customers, checking the contents of the cars, etc. In short, the record establishes that these several warehouse companies are engaged in the same kind of business, that each ships and receives at its warehouse in Philadelphia, to and from various points in the United States over the same railroads, the same kinds of goods, and that the circumstances and conditions surrounding the transactions are similar, if not identical.

IV. A carrier may not lawfully pay one shipper for transportation service and deprive another of compensation for similar service. Even if it be assumed, therefore, that the services appellants perform are transportation services, the payment of allowances to them and the withholding of allowances to complainants for similar service is an "undue" discrimination. *Union Pacific R. R.* v. *Updike Grain Co.*, 222 U. S. 215. While the decision in *Interstate Commerce Commission* v. *Diffenbaugh and Peavey*, 222 U. S. 42, apparently sustained the Union Pacific's exclusive contract with the Peavey elevators, that interpretation is inadmissible in view of the *Updike case*, relating to the same elevation situation at Omaha. Cases relied upon by ap-

pellants like *D., L. & W. R. R. Co.* v. *Morristown*, 276 U. S. 182, sustaining exclusive contracts between railroad companies and taxicab companies, baggage transfer companies and the like, are inapposite because those contracts were not made with shippers and did not relate to common carrier transportation duties. The *Arbuckle case, U. S.* v. *B. & O. R. R.*, 231 U. S. 274, and the *St. Louis Terminal Case*, 34 I. C. C. 453, are not controlling because the facts were different. But the Commission found that the services performed by appellants are not transportation services, and this finding of fact was sustained by the court below as supported by evidence. Cf. *L. & N. R. R.* v. *U. S.* (*Private Car Case*), decided Feb. 25, 1931.

V. Power to prescribe the reasonable and nondiscriminatory practice to be observed by a carrier to take the place of a practice found to be unjustly discriminatory is expressly conferred upon the Commission by section 15 (1) of the Act. The Commission's action in requiring that the discrimination here found should be removed by the carriers ceasing to pay the allowances to appellants was a proper exercise of this power because (1) the services performed by appellants, as well as complainants, are warehouse trade services for the performance of which they are entitled to no compensation from the carriers; (2) the allowances were given in consideration of the appellants causing their traffic to be routed over the lines of the respective competing carriers. Each of the con-

tracts provides that no allowances will be made to the warehouse company where the carrier has received only a switching haul in Philadelphia. In order to earn its allowance, the warehouse company must cause the shipment to be routed over the contracting carrier's line in a line-haul movement. Allowances for this purpose are unlawful rebates. *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444; *United States* v. *Union Stock Yards*, 226 U. S. 286, 307.

THE CROSS APPEALS

I. The court below erred in staying the operation of the Commission's order pending appeal. It was not shown that appellants would otherwise suffer irreparable injury. No bond was required by the court to indemnify the warehouse companies suffering the discrimination pending determination of the appeal. The finding of the District Court that the allowances were rebates should have precluded the issuance of a stay. The granting of the stay was contrary to the policy of the law to afford prompt relief in discrimination cases.

ARGUMENT

STANDING TO MAINTAIN THE SUIT

I

Appellants, having failed to show that the Commission's order will deprive them of a legal right of their own, are without standing to maintain an independent action to set aside the order

The opinion of the court below states:

> Although the railroads were defendants before the Interstate Commerce Commis-

> sion, they did not intervene in the instant proceedings and took no part through counsel or otherwise at the hearing and argument of the case. We must assume, therefore, that they are satisfied with the order requiring them to desist from the payments and to cancel their tariff provisions, not only those under which the payments are made to the petitioners, but those in which the petitioners' warehouses are designated as public freight stations. (R. 36.)

The appellant warehouses are in a position similar to that occupied by the appellants in *Sprunt & Son* v. *United States*, 281 U. S. 249, 254–255. Here, as in the *Sprunt case*, the order, in so far as it directs elimination of the rate differential (caused by the payment of the allowances), worsens the economic position of the appellant warehouses, for it deprives them of an advantage over their competitors of amounts equal to the allowances. The enjoyment of this advantage, which was threatened, gave them a distinct interest in the proceedings before the Commission under sections 2 and 3 of the Act. Having this interest, they were entitled to intervene in that administrative proceeding. And, having done so, they became entitled under section 212 of the Judicial Code to intervene, as of right, in any suit "wherein is involved the validity" of the order entered by the Commission. "But that interest alone did not give them the right to maintain an independent suit, to vacate and set aside the order. Such a suit can be brought by a shipper

only where a right of his own is alleged to have been violated by the order." (*Ibid.* 255.)

It is urged in behalf of appellants that their rights arise not under the Interstate Commerce Act but independently thereof, and they point to their contracts with the carriers. But the Commission has made no adjudication as to the contracts. It has found that the payment of the allowances, provided by the contracts, results in unjust discrimination in favor of appellants and against their competitors, who were complainants before the Commission, and has ordered the carriers to remove the discrimination, not by extending the allowances to complainants but by ceasing to pay them to appellants. The situation would be no different if the allowances were paid to appellants without contracts. Appellants can not be given any rights by contract in derogation of the Interstate Commerce Act. *Louisville & Nashville R. R.* v. *Mottley,* 219 U. S. 467, and other cases cited, *infra,* page 86.

The Commission has determined purely an administrative question, a question of fact, as to whether the unjust discrimination alleged in the complaints exists. As an incident of that determination it was required to ascertain whether certain services performed by appellants and complainants including loading and unloading carload

freight were transportation services for the performance of which allowances were lawfully payable under section 15 (13) of the Interstate Commerce Act. But this, too, was an administrative question, which like the problems presented in *Loomis* v. *Lehigh Valley R. R.*, 240 U. S. 43, and *Director General* v. *Viscose Co.*, 254 U. S. 498, referred to more fully hereinafter, page 73, was one directly concerning rate making. For, if the appellants performed no transportation services, but only warehouse trade services, it would follow that the payment of allowances to them would result in the collection of net rates for their transportation lower than the tariff rate.

The case at bar is different from the *Diffenbaugh case,* 222 U. S. 42. As pointed out in footnote 5, page 257, of the *Sprunt* decision, "two suits were involved in the *Diffenbaugh case.* One was against a carrier to recover allowances for substituted transportation facilities alleged to be due under section 15 (13) of the Act. The Interstate Commerce Commission was joined and its order prohibiting the allowances sought to be enjoined because the order would otherwise have constituted a defense to the suit. In the other action, interested carriers intervened as parties plaintiff and persisted in their effort to set aside the order." Here no suit against the carrier to recover allowances is

involved, and the interested carriers have not intervened or made any effort to set aside the order. Here the alleged transportation services performed are not for elevation of grain in transit which was expressly declared by Congress after long consideration to be a transportation service, but primarily for loading and unloading carload freight, a service almost universally performed by shippers and receivers without allowances from the carriers. See *infra*, pp. 71–76.

In the *Sprunt case* the court held that the case had become moot by the acquiescence of the carriers in the Commission's order. The case at bar does not appear to be moot. But the mootness of the *Sprunt case* was a second reason why it could not be reviewed in this Court; that phase of the case did not affect the holding that the appellants had no standing to maintain the suit because of lack of actual or threatened legal injury. (Compare *Pittsburgh & W. Va. Ry.* v. *United States*, 281 U. S. 479.

The right of the Commercial Exchange and other Philadelphia trade bodies who intervened in the court below in support of the petitions of the appellant warehouses, and which have joined with them in the appeals in Nos. 636, 639, and 642, would seem clearly to depend on the right of the appellant warehouses to maintain their appeals.

ON THE MERITS

I

The appellants and complainants were shown to be persons within the meaning of that term as used in sections 2 and 3 of the interstate commerce act. Hence, the transportation of property for appellants at net rates lower than those charged for similar transportation for complainants constitutes discrimination in violation of those sections

Appellants contend they are not the consignors, consignees, or owners of the freight, for the loading and unloading of which they are compensated by the carriers, have no dominion over the transportation, and act merely as the agents of the carriers for performing a transportation duty.

But the evidence is clear that the allowances are paid to appellants only on shipments to and from their warehouses in connection with which they are employed by their customers to perform some warehouse service—business which they have obtained by their advertisements and solicitation. When they receive an inquiry from a prospective customer, they write to him, quoting their rates and giving instructions as to the billing and routing of the shipments. For instance, the Merchants Warehouse Co., in a letter to a machinery manufacturer at Chicago, wrote (Ex. 6, R. 549–550):

> If you will bill your shipments for delivery to us via the Pennsylvania Railroad, the cars will be placed on our sidings with-

> out your incurring any additional expense in the nature of drayage, switching or handling charges.

A letter to a stove company at Milwaukee (Ex. 6, R. 550–551) advised:

> Our warehouse is served by the Pennsylvania Railroad, enabling us to receive carload lots over that road without cartage, and to ship either in carload or L. C. L. lots to any point reached by the Penna. Railroad, without cartage or extra costs to you.

In answer to a letter "as to storing and distributing" corn sugar in carload lots, the warehouse company instructed:

> Cars should be consigned to yourself c/o Merchants Warehouse Co., River Front Stores, Phila. Penna. R. R. dely. (Ex. 6, R. 552–553.)

The evidence shows conclusively that all the inbound freight handled at appellants' warehouses, on which they receive allowances, are shipments which have been *consigned* to them in this manner,[10] that is to say, shipments which have been shipped to the warehouses, in pursuance of an understanding

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[10] As to Merchants Warehouse Co.: R. 189, 192, 196–198, 351, 375, 376, 378, 379, and stipulation of counsel, R. 233, 338.

As to Pennsylvania Warehousing & Safe Deposit Co.: R. 306; Exs. 42–47, R. opp. 596, and stipulation of counsel, R. 312, 315.

As to Philadelphia Warehousing & Cold Storage Co.: Ex. 50; R. opp. 598.

or agreement previously entered into between the warehouses and the customer such as reflected by the above-mentioned letters, consigned either to the warehouse company by name, or in some other name, frequently the name of the shipper, *in care of* the warehouse.

The outbound shipments, on which appellants receive allowances, may be less-than-carload lots, shipped in the process of distribution, from spot stocks in their warehouses, or carload shipments made up by assembling numerous l. c. l. lots. (Exs. 2, 3, 41, 49; Ex. 12, R. 558–560; compare Ex. 37, R. 572–574.)

Usually, continuing agreements are made with large manufacturers or producers[11] for shipping activities such as described in the following testimony:

> For instance, one of our customers is Colgate & Company, soap manufacturers, whose plant is located at Jersey City, New Jersey, who ship their various products to us in carload lots at carload rates by railroad. They mail us a manifest which indicates the contents of the car, both as to count and product. This manifest is turned over to our Traffic Department, who immediately trace the movement of the cars with the railroad to expedite delivery if possible. Disposition instructions on all or part of the contents of

[11] See Ex. 5, R. 548–549; Ex. 30, R. 563–564; Ex. 48, R. 597; Ex. 18, and R. 269–275.

> the car are also received by us from Colgate & Company prior to the arrival of the car. That portion of the carload which is not delivered in L. C. L. lots immediately upon arrival of the car is placed in storage awaiting future withdrawal orders, which are usually given to us by the local sales representative of the manufacturer. We deliver this soap locally and to nearby suburban points, and some is shipped by railroad or motor truck in less-carload lots to points in New Jersey, Pennsylvania and Delaware. This manufacturer will keep shipping his soap to us in carload lots at carload rates throughout the year, always keeping sufficient stock on hand to meet the immediate needs of customers in this territory, and thus be able to compete with soap manufacturers whose plants are located in Philadelphia. (R. 270.)

Railroad transportation is essential to the existence of both appellant and complainant warehouses, the local business in Philadelphia not being sufficient to enable them to operate at a profit. (R. 187, 210, 218–219, 234, 243, 251, 266 et seq., 303–306, 309–311; Ex. 36, R. 571; Ex. 37, R. 572–590.)

The extent of appellants' shipping activities is illustrated by the following testimony of the Merchants Warehouse Company's superintendent:

> Freight is shipped inbound to these warehouses over the Pennsylvania Railroad, the quantity depending on the size of the ware-

> house; the small warehouses get a small amount and the larger warehouses get considerable. Freight is also shipped outbound over the Pennsylvania Railroad. We get materials from pretty nearly every state in the United States; and it goes out that way—we ship all over the country. (R. 187.)

It seems unnecessary to determine whether the appellants and complainants are technically and legally "consignors" or "consignees" of the shipments to and from their warehouses. For sections 2 and 3 of the Interstate Commerce Act do not use those terms, nor the term "owner," but make it unlawful for a carrier to discriminate against "any person or persons," and prohibit carriers from giving undue preference or advantage to "any particular person, company, firm, corporation, or locality," in respect of transportation. Therefore, if the appellants and complainants are "persons" within the meaning of that term as used in sections 2 and 3, the transportation of property for appellants at net rates lower than those charged for similar transportation for complainants, constitutes discrimination in violation of the Act and within the jurisdiction of the Commission to correct.

It has long been settled that persons engaged, like appellants and complainants, in the business of shipping and receiving freight for others, are persons within the purview of sections 2 and 3.

Interstate Comm. Comm. v. *Del., L. & W. R. R.*, 220 U. S. 235, had to do particularly with forwarding agents, "who embarked in the business of obtaining a carload rate for various owners of merchandise by aggregating their shipments" The carriers had sought to exclude forwarding agents and others likewise engaged from the benefit of the carload rate by providing in their schedules to the effect that the carload rate would be applied only where the consignor or consignee was the actual owner of the goods in the car. The court held that a carrier can not make mere ownership of goods tendered for transportation the test of the duty to carry, nor discriminate in fixing charges for carriage upon such ownership.

The court further held that persons engaged in business of that character are "persons" within the meaning of that word as employed in the second section of the Interstate Commerce Act. Indeed, the court said it was settled in England prior to the passage of the Act to regulate commerce, that the Equality Clause of the English Act, from which the provisions of section 2 of the Act to regulate commerce were substantially taken, "forbade the charging of a higher rate for the carriage of goods for an intercepting or forwarding agent than for others."

It may not be doubted that the same holding would apply to any persons, groups of persons, or organizations who engage in the same business.

The opinion indicates that storage and other companies, as well as the so-called forwarders, did so engage (pages 242–243):

> There can be no doubt that the privilege of shipping at a lesser rate for the carload shipment than was asked for a less than carload shipment came to the interwoven with and inseparable from the movement of commerce through the channels of railroad transportation. And the benefits of the lesser rate came to be obtained not alone by an owner of all the goods shipped in a carload, but by combinations of owners, by agreements between them concerning particular and isolated shipments, by the organization of associations of shippers having for their object the creating of agencies to receive merchandise belonging to the members of the association and to aggregate and ship them in carload lots in the name of one consignor to a single consignee at one destination by the use of commission houses, storage and other companies, etc.

In *Great Northern Ry Co.* v. *O'Connor*, 232 U. S. 508, the appellee employed a forwarder to ship a less-than-carload lot of property consisting of a typewriter, wearing apparel and other personal effects. The forwarder loaded the goods in a car along with household goods, shipped the car as emigrant movables and in order to obtain the lower of two carload rates, stated the value as not exceeding $10 per cwt. The goods were lost and

O'Connor sued the carrier for the full value. The court held that the carrier was obliged to treat the forwarder as shipper, following the *D. L. & W. case,* and that—

> If the Forwarder was shipper for the purpose of securing carload rates, it was also shipper for the purpose of classifying and valuing, in order to determine which tariff rate was applicable.

In other words, the forwarder was shipper for all purposes. O'Connor, the owner of the goods, was not the shipper, and had no privity with the carrier. And it was held that O'Connor could not recover from the carrier, but "if there was any undervaluation, wrongful classification or violation of her instructions [to the forwarder] resulting in damage," O'Connor had her remedy against the forwarder.

In *Lehigh Valley R. R. Co.* v. *United States,* 243 U. S. 444, a case brought under the Elkins Act, the court said that "as toward the railroad, George W. Sheldon & Company [a freight forwarder] is consignor and consignee, and although it may be in no case the owner, that does not concern the appellant. Upon the admitted facts there can be no doubt, and it is not denied, that it is, to all legal intents, the shipper of the goods."

The *D. L. & W. case, supra,* sustained the Commission's ruling in *California Commercial Assn.* v.

Wells Fargo & Co., 14 I. C. C. 422, in which the Commission said, at 427:

> The carrier deals with the shipment that is tendered, not with its ownership nor with its ultimate use; and it deals with the shipper who tenders it, not with the owner of the property or the last and most remote person to whom it is distributed. To veer from this straight course, no matter how slight a degree or for what apparently beneficial purpose, is to lead away from the policy of the law which condemns discriminations and preferences.

In *United States* v. *Milwaukee Rapid Transit Co.*, 145 Fed. 1007, it is said at page 1012:

> And if an owner [of property shipped], having full dominion in all respects, conveys to another the dominion for transportation purposes, that other in all dealings respecting transportation should be deemed the owner and shipper.

In *Terminal Warehouse Co.* v. *United States*, 31 Fed. (2d) 951, 959, the statutory court sustaining the Commission's order in the *Baltimore warehouse case* said:

> We think that the decisions of the Supreme Court cases in which it is held that carriers may not lawfully discriminate for or against forwarders of goods are pertinent to this case. [Citing the *D. L. & W.* and *Lehigh Valley* cases *supra.*] Both the

warehouse and the forwarder solicit and obtain the transportation of goods. The forwarder is concerned with the assembling of goods into carload lots at the point of shipment and the carriage of the same to one consignee, who may be the forwarding agent himself, and who receives the goods and distributes them to the parties for whom they are intended. The warehouseman is chiefly concerned with the receipt and distribution of goods from the carrier after they have reached their destination. It is true that the forwarder is usually the consignor or the consignee of the goods, and it may be conceded *arguendo* that the warehouse company in this case is not. But both are closely related to the carriage of the goods and to the carrier, and both are entitled to the protection of the statute.

Under these authorities, merchandise warehouses, engaged as actual forwarders of freight from the warehouses and recipients or interceptors of inbound carload freight as a necessary agency in order to secure the application of the carload rate where otherwise the higher less-than-carload rates would be applicable, are "persons" within the meaning of sections 2 and 3 of the Act and are to be treated as "shippers" for the purpose of applying the provisions of that statute and the Elkins Act.

No reasons appear to warrant an interpretation of the regulatory statutes so narrow as to exclude merchandise warehouses from their purview.

They are in the same category as forwarding agents. Such warehouses are located in all parts of the United States (Ex. 4, R. 531) and evidently control an enormous traffic. It is obviously important to the proper administration of the law that these large shipping agencies be held to be within and subject to the provisions of those statutes. Otherwise all the evils denounced by them, including discriminations, rebates, false billing, false claims, undervaluing (compare *O'Connor case, supra; Mo. Kans. & Tex. Ry.* v. *Harriman*, 227 U. S. 657, 671), may be committed by them without fear of punishment. At the same time they are entitled to the protection of the statutory prohibitions against unreasonable rates and discriminatory and preferential practices.

1. The manner in which the shipments are billed is immaterial, being a matter of form not affecting the substance of the transactions

Under the authorities cited above it would seem quite immaterial what names are used in shipping the carload lots. In the *D. L. & W. case,* as quoted above, it is stated that the forwarder or shipping agency shipped the goods in carload lots "*in the name* of one consignor to a single consignee"; and on page 243, where the forwarding agent's business was described, it is said the carloads were shipped "*in the name* of the forwarding agent, or of the owner of one of the less-than-carload shipments, to one consignee, who may be the forwarding

agent himself, another forwarding agent at the point of destination with whom he has business relations, or of the owner of a part of the property transported. The consignee of the shipment, *whoever he may be*, receives the carload and distributes its contents to the parties for whom they are intended." (Italics ours.)

As indicated by the letters quoted from above, the warehouse generally instructs the shipper to bill the shipments to himself c/o the warehouse. If the shipper fails to do so and instead names only the warehouse as consignee (compare R. 279) under appellants' theory the warehouse is then the "consignee," but, under their theory, if the shipper in compliance with the instructions uses the "care of" billing the warehouse is not the consignee. It seems clear that an inconsequential change in the manner of billing does not affect the substance of the transaction. (See R. 233–234; 283, 375–376; Ex. 38c, R. 594–595; Exs. 38, 38a and 38b, R. 590–594; Ex. 62, R. 703.)

As stated by the court below (R. 41–42), "while the billing in the instant case did not name the contract warehouses as consignors or consignees and the documents in consignments were made out 'in care of' the warehouses, it is inconceivable that the mere wording of the shipping documents can justify a course of action which would otherwise be contrary to law." (Citing *Terminal Warehouse Co.* v. *United States, supra,* 31 Fed. (2d), at page

959.) It is settled that the actual situation underlying a shipments rather than recitals in the shipping documents control the application of the Acts of Congress. *D. L. & W. case, supra; United Sttaes* v. *Koenig Coal Co.*, 270 U. S. 512; *United States* v. *Metropolitan Lbr. Co.*, 254 Fed. 335; *B. & O. S. W. R. R.* v. *Settle*, 260 U. S. 166; *Penna. R. R.* v. *Clark Coal Co.*, 238 U. S. 456, 466.

II

Appellants' warehouses are not operated or used as public freight stations of the carriers

From the facts already stated it is clear that appellants are engaged in the operation of storage and distribution warehouses located upon private premises, served by private sidetracks of the carriers. (R. 187, 302, 309, 311; Ex. 100, R. 745, 751–752; Ex. 101, R. 764, 771–772; Ex. 102.) The exhibits, to which reference has already been made, showing the advertisments of appellants' business and the actual solicitation of business by them establish the fact that their function is furnishing storage and distribution services to merchants, manufacturers, and shippers, rather than the performance of common-carrier duties. (R. 194.) Those exhibits, and, indeed, the testimony throughout the entire record, show that appellants' warehouses are in fact used only by the persons, companies, and firms from whom appellants have suc-

ceeded in soliciting merchandise for storage and distribution.

None of the contracts provide that the appellants' warehouses are to be operated as public freight stations of the carriers. They contemplate their operation as warehouses only. The evidence, as a whole, in the judgment of the Commission and the court below, has established that those warehouses were devoted to the exclusive use of the appellants in carrying on their private business dealings with their patrons.

The burden of defending the allowances on the ground that they were compensation for operation of railroad stations was assumed by the carriers and the appellants in the Commission proceeding. The evidence in behalf of the Merchants Warehouse Co. is embraced in the testimony of witness Henry, its superintendent (R. 186–199), and witness Richardson, its general manager (R. 374–398, 439–440, 452). Witness Henry, after testifying in general that the services performed by his company for its various patrons was the receipt of their goods, in carloads, and the distribution of them in l. c. l. lots (R. 186–191), sought to indicate that this distribution was performed "exactly in the same capacity as a railroad freight station, as an agent of the carriers." But he was unable to specify any published railroad tariff "authorizing that distribution of carload freight at the railroad freight stations." (R. 191.)

Indeed, the tariffs of all the carriers expressly provide to the contrary. Rules 14 and 23 of the Consolidated Classification (Ex. 33, R. 567), to which classification all three of these carriers are parties (R. 697, 708, 710), and to which none of them publish any "exceptions," prohibit carriers' agents from assembling or distributing freight carried at carload rates. For this reason, assembling and distribution work, such as performed by all the appellants at their warehouses, can not lawfully be done by railroad agents at railroad freight stations. To do so would be a misdemeanor, constituting a failure strictly to observe the published tariffs, in violation of sections 6 (7) and 10 (1) and (2) of the Interstate Commerce Act and section 1 of the Elkins Act.

It is primarily because of the restrictions of these rules that merchandise warehouses are employed for distribution service, as fully explained at R. 215–216 and 427–429. (Compare *Int. Comm. Comm.* v. *Del., L. & W. R. R.*, 220 U. S. 235, 245–246, and see page 14 of the Department of Commerce's publication, "The Merchandise Warehouse in Distribution," Ex. 18, in reference to these rules.)

Witness Richardson introduced in evidence the documents covering three typical shipments to his warehouse. (Exs. 90, 91, 92.) These were carload shipments of canned vegetables from Newark, N. Y., canned beans from Hoopeston, Ill., and

ginger ale from Hudson, N. Y. The contents of these typical cars (R. 378) were distributed to various persons and companies, in small l. c. l. quantities, by the warehouse, in accordance with the orders of the warehouse patrons which are included among the documents (R. 378–379). Those exhibits portray warehouse distribution service similar to the warehouse activities of complainants. Witness Richardson testified that 744 cars were loaded and shipped by his company in a certain period, the ladings of which had been previously delivered to the warehouses by trucks, or previously stored in the warehouses by the owner, but did not state that the owners of the freight loaded into those cars were not patrons of the warehouse. (R. 452.) Appellants did not name a single shipper who has ever used their warehouses unless he employed their storage, distribution, or assembling services. While the credibility of witnesses and the weight of and conflicts in the evidence are matters left to the Commission, *Interstate Com. Comm.* v. *Louis. & Nash. R. R.*, 227 U. S. 88, 92, 100; *United States* v. *L. & N. R. R.*, 235 U. S. 314, 320; *Assigned Car Cases*, 274 U. S. 564, 580–581, it would seem that from such evidence the Commission could not have found that appellants' warehouses are used as railroad freight stations at which any shipper, not desiring appellants' warehouse services, could tender and receive carload shipments to and from carriers.

The testimony of witness Justice, for the Pennsylvania Warehousing & Safe Deposit Co. (R. 301–309, 398–403), witness Funck for the Pennsylvania Railroad Company (R. 318–357), witness Gheen for the Reading Company (R. 357–364), and witness Settle for the Baltimore & Ohio R. R. (R. 364–368) also fail to show that appellants' warehouses are devoted to public use in the service of the railroad companies and not to the private business of the warehouse companies. If appellants' warehouses were actually used as railroad freight stations it seems that ample evidence in the form of bills of lading, shipping orders, waybills, freight bills, etc., covering numerous transactions for the railroad companies and the testimony of shippers that they had used such stations without employing appellants' warehouse services, could have been readily produced.

The evidence in rebuttal, showing appellants' warehouses are private business enterprises and are not railroad stations is clear and convincing.

It was proved conclusively that all shipments inbound to appellants' warehouses are billed to those warehouses either by name or in their care.[11] Those shipments were billed in that manner by the consignors in response to letters of solicitation sent

[11] As to Merchants Warehouse Co.: R. 189, 192, 196–198, 351, 375, 376, 378, 379, Ex. 6, R. 550, 553, and stipulation of counsel, R. 283. As to Pennsylvania Warehousing & Safe Deposit Co.: R. 306, Exs. 42–47, R. opp. 596; stipulation of counsel, R. 312, 315. As to Philadelphia Warehousing & Cold Storage Co., Ex. 50, R. opp. 598.

out by the appellants.[17] That inbound traffic, therefore, was traffic which the appellants elected to handle in carrying on their private business activities and was not freight traffic committed to the appellants by the railroads for handling in railroad service.

The railroad companies issued printed circulars of instructions to guide their yard and station employees in the handling of shipments at Philadelphia.[18] (R. 353, 363, 373.) Those circulars listed the public freight stations of the railroads and the private business enterprises served on private side tracks. Appellants' warehouses, like the warehouses of the complainants, are listed in those circulars not as public freight stations, but as the facilities of private business enterprises served on private or individual side tracks. These records, used for years to guide the railroad employees who actually control and direct the movement of loaded and empty cars at Philadelphia, negative the assertion of the use of appellants' warehouses as public freight stations.

James Gallagher, one of the complainants before the Commission, operator of Gallagher's warehouse, who has also conducted a trucking business in Philadelphia for many years, trucking freight

[17] Ex. 6, R. 549–558; Exs. 42–47, R. opp. 599; Exs. 50–51, R. opp. 598.

[18] Circular F. D. 199 of the Pennsylvania R. R., Ex. No. 100, R. 745–763; Circular 225 of the Reading Co., Ex. No. 101, R. 764–774; Circular F. D. 799 of the B. & O. R. R., Ex. No. 102.

to and from railroad stations and warehouses, and therefore fully conversant with public freight stations in railroad service and warehouses at Philadelphia, testified that appellants' warehouses are not public freight stations in railroad service. (R. 423–427.) Another experienced truckman testified to the same effect. (R. 434–435.) The absence of advertisement of the appellants' warehouses as freight stations, such as the railroads use in connection with their actual stations, was disclosed. (R. 440–442; R. 429–430; compare R. 355.) Shipments, tendered for transportation over the lines of the Pennsylvania Railroad, by being offered for shipment at two warehouses of the Merchants Warehouse Company were refused by employees of that company. These shipments were refused on the sole ground that the warehouses were not freight stations. (R. 435–436; 437–439.)

Appellants are not authorized to issue bills of lading on behalf of the carriers. When an outbound shipment is to move from their warehouses, they must obtain a bill of lading from the railroad agent, as other shippers do. (R. 385–386.)

The evidence referred to above, together with many inferences which the Commission could draw from the record as a whole (*O'Keefe* v. *United States*, 240 U. S. 294, 303), support the Commission's finding of fact that appellants' warehouses "are not in fact public stations," and differentiate *United States* v. *Balt. & Ohio R. R. Co.*, 231 U. S.

274, known as the *Arbuckle case,* where the contracts expressly provided for the operation by Arbuckle Bros. of a public freight station, known as the Jay Street Terminal, and where Arbuckle Bros. actually operated a union freight station for the several railroad companies whose lines reached greater New York, and at which freight for the general public was received and delivered, bills of lading issued, etc.

The court below found that "there is substantial evidence to support the facts found by the Commission that the warehouses of the plaintiffs (appellants) are not in fact open public freight stations of the railroad"; (R. 41) and the Maryland Court in the Baltimore warehouse case made the same finding under similar facts (R. 37–38.)

III

The Commission's finding that the payment of the allowances to the appellants results in unjust discrimination and undue prejudice against the complainant warehouses, is amply supported by substantial evidence

1. Complainants have suffered prejudice which has been a source of positive advantage to the appellants

Voluminous evidence was submitted to the Commission developing in detail the prejudice and disadvantage suffered by the complainants and the positive advantage and preference enjoyed by appellants because of the payment of the allowances to the latter. This evidence establishes that the al-

lowances have been used to divert business from complainants to appellants (R. 276); that the latter have been able to underbid complainants for new business, and to take customers away from complainants (R. 276); that complainants have been compelled to reduce their normal warehouse charges in order to hold some of their customers under the disadvantage of the allowances (R. 276–277), and, because of them, have never been able to obtain a fair proportion of the warehouse and distribution business in Philadelphia (R. 281–282); that appellants have used the allowances for many years to build up their business and to suppress the development of the business of their competitors, and when the allowances are eliminated the complainants will continue to suffer from the disadvantage because appellants will have the established trade, built upon the allowances, and it will require years for complainants to recover their fair share of the competitive merchandise business (R. 281).

Illustrative of this evidence is the testimony of Witness Sullivan, Vice President and General Manager of the Terminal Warehouse Company, who named the warehouse companies that receive allowances (the appellants), stated that the Terminal is a competitor of each of them, and explained the use of the allowances to divert business from the Terminal to its competitors:

> There are hundreds of well known concerns that employ warehouses to distribute

> their products in the Eastern cities. We and the subsidized [contract] warehouse companies actively compete in soliciting the business of those concerns. Those concerns ship their goods to the warehouse that can offer them the lowest aggregate charge for the distribution of their goods. The aggregate charge is made up of the railroad freight rates to the warehouse and the warehouse charges. Our subsidized competitors are enabled, by the allowances, to quote lower aggregate charges than we can quote, and they underbid us and take competitive business away from us. (R. 276.)

Specific instances of that underbidding were given (R. 276; and see Exhibits 19–29, R. opp. 562); and a number of former customers, mostly large, nationally-known manufacturers, whose business had been secured by the appellants by reason of the allowances, were named. (R. 276.)

The additional freight charge paid by the Terminal over and above that paid by the appellants, can not be passed on to its customers. "We can not pass it on to any person. When we do not, or can not, shrink our aggregate charge to reflect the allowance, the outside concern will not give us his business. In such case he gives his freight to the subsidized warehouse companies who underbid us." (R. 281.)

Due to the handicap of being forced to compete with warehouses who receive allowances from the railroads for the unloading of cars, amounting in

many instances to as much as $15 per carload, the Terminal was never able to obtain a fair proportion of the warehouse and distribution business of Philadelphia. (R. 281, 282.) How the Terminal was deprived of reasonable opportunity to handle certain commodities under the competition of the appellants was described:

> The storage and distribution of flour is controlled by the subsidized warehouses solely by reason of the unloading allowance granted to them by the railroads. This allowance enables the subsidized warehouse to totally eliminate handling and storage on all that portion of the cars that is delivered within the first 48 hours after the cars' arrival at the warehouse. In the case of flour they also eliminate any handling charge on that portion of the carload going into storage and eventually delivered in l. c. l. lots. In soliciting these flour accounts for storage and distribution, we were told that the construction of our warehouses and their locations were ideal for the flour trade, but that they would be unable to give us any business unless we were willing to meet the rates and extend the free handling privilege granted to the flour trade by the subsidized warehouses.
>
> In former years we handled thousands of bales of cotton linters annually through our warehouses at rates that were only nominally compensatory. However, about four years ago the Merchants Warehouse Company

started a drive for this class of business and quoted rates approximately 50 per cent less than our charge. They were able to do this only because of the allowance they received from the railroads. Being unable to meet the rates of the subsidized warehouses, the Terminal Warehouse Company has lost this business entirely.

It is absolutely futile for the Terminal Warehouse Company to solicit the storage and distribution of broom corn and feed as the jobbers or dealers in these products are in many cases able to distribute the entire carload within 48 hours of the arrival of the cars at the subsidized warehouse and do not have to pay one cent for all the clerical and physical labor necessary to properly distribute this merchandise because the subsidized warehouses receive their recompense out of the unloading allowance paid them by the railroad companies. (R. 282–283.)

Witnesses on behalf of each of the other complaints testified to the same effect. (R. 202–211; 222–226; 236–237; 243–244; 251–253.)

2. A competitive relation exists between the appellants, who are the recipients of the preference, and the complainants, who suffer the prejudice

That the complainants and the appellants are competitors for the merchandise warehouse business of Philadelphia has already been indicated. Witnesses for each of the six complainants specifically so testified. (R. 205, 222, 236, 243, 252, 275–276.)

The cold storage warehouses require special mention. The appellant Philadelphia Warehousing & Cold Storage Company is engaged in both cold storage warehousing and merchandise warehousing. (R. 309–311.) The Industrial Cold Storage & Warehouse Company, complainant, is also engaged in both cold storage and merchandise warehousing. (R. 234, 239.) These two warehouse companies specialize in the handling of food products requiring cold storage. (R. 235, 309.) The merchandise warehouses handle many of such food products during the cooler months and, therefore, they compete with the cold storage warehouses. (R. 205, 237, 239.) Like the merchandise warehouses, the cold storage operators make distribution in small lots of products shipped to them as carloads at the carload rate. (R. 236, 311, Ex. 49.) Hence, what is said herein in reference to merchandise warehouses is applicable to the cold storage concerns.

3. The circumstances and conditions surrounding complainants' traffic are substantially similar to those surrounding appellants' traffic

The backbone of the merchandise warehouse business is the traffic of prominent business concerns that customarily use warehouse distribution service in marketing and distributing their goods in Philadelphia and other large cities. (Ex. 30, R. 563–565, is a list of such concerns; compare Ex. 4, R. 531.) When they decide to market their goods in cities other than that in which their plant

is located, they make a continuing arrangement with some warehouse company to receive the carloads of their products, store as to marks, grades, sizes, etc., and have them available for immediate demands from their customers in comparatively small lots. (R. 428.)

The evidence is clear that appellants are engaged as operators of distribution warehouses. The testimony of the superintendent of the Merchants Warehouse Co. (R. 186–192), of the general superintendent of the Pennsylvania Warehousing & Safe Deposit Co. (R. 305), and of the president of the Philadelphia Warehousing & Cold Storage Co. (R. 311), read in the light of the advertisements and letters of these concerns, leaves no room for doubt on this score.

So similar are the services these respective Philadelphia warehousemen offer to the public that many of such large concerns carry their "acounts" sometimes with one or another of the appellants' warehouses and at other times with one or another of the complainant warehouses. (R. 276, 286–288; compare Exs. 19–29, R. opp. 562.) For instance, the J. C. Hubinger Bros. Co., manufacturers of "Elastic Starch" and other corn products, with a factory at Keokuk, Iowa, formerly carried its account with the Terminal Warehouse Co. but now carries it with the Merchants Warehouse Co. (R. 276.) On October 15, 1925, that manufacturer

wrote the Terminal Warehouse Company as follows (Ex. 24, R. following 562):

> * * * we have arranged to send any future cars going to Philadelphia to another warehouse for the reason that we have been able to secure a better rate for storage and we are promised the same prompt attention by this other warehouse that we have received from you.
>
> Your services which you have rendered toward this company in regard to handling our account, has been very good and as stated above, the only reason that we considered making a change was because of our being able to secure the same kind of service at a cheaper storage rate.

When this account was carried with the Terminal Warehouse Company the service rendered by the Pennsylvania Railroad was not different than it was when later the account was transferred to the Merchants Warehouse Company. For the Terminal, the Pennsylvania transported the carloads to Philadelphia and made delivery by spotting them on the Terminal's private sidetrack. Thereupon, the latter broke the seals, etc., unloaded the car, and followed the instructions of the shipper as to storage, distribution, etc. (R. 270–275.) For the Merchants, the Pennsylvania likewise transports the cars and makes delivery by placement on the private sidetrack of the warehouse, whose employees unload the car and store or distribute the

contents in accordance with the owner's instructions. (R. 186–192.) For the service of unloading and other incidental services in connection therewith, the Pennsylvania pays an allowance to the Merchants but refunds nothing to the Terminal, although the latter performs every service that the Merchants does.

The evidence is clear that the Terminal, the Merchants, and all the other complainants and appellants, load and unload their freight, pay and collect freight charges, send "notices of arrival" to their customers, check the contents of the cars, give the railroad a report, notify railroad of damage to the freight, prepare bills of lading, mark and stencil packages, recooper, give 48 hours free time, etc. (R. 203–204; 219–220; 235–237; 252–253; 270–272; 274; 278–279; 431–432.)

All of these services, "including the loading of freight into railroad cars and the unloading of freight from railroad cars, are warehouse trade services which are performed by all merchandise warehouses under the terms of their contracts and arrangements with the manufacturers and wholesalers." (R. 274.) Part V, *infra*, deals with this subject more fully.

In short, the record establishes that these several warehouse companies are engaged in the same kind of business, that each ships and receives at its warehouse in Philadelphia, to and from various points in the United States over the same railroads, the

same kinds of goods, i. e., package freight of all kinds except articles of an inflammable or explosive character,"[14] and that the circumstances and conditions surrounding the movement of this traffic are similar, if not identical.

IV

A carrier may not lawfully pay one shipper for transportation service and deprive another of compensation for similar service. If it be assumed that the services appellates perform are transportation services, the payment of allowances to them and the withholding of allowances to complainants for similar services is an "undue" discrimination

Appellants contend that the loading, unloading, and other incidental services they render are transportation services as defined in section 1 (3) of the act, which the carriers are under legal obligation to perform, that the allowances are compensation for those services, and that the carriers have appointed appellants their agents for the performance of those services. And while they admit they have an advantage, they claim it is only an incidental one, the discrimination as a matter of law being not undue, because the carriers may employ them

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[14] Complainants: Walter A. Bailey, R. 204; Northeastern Warehouse Co., R. 218–221, 225; Rex & Co., R. 243; Industrial Cold Storage & Warehousing Co., R. 235; Gallagher's warehouses, R. 251–252; Terminal Warehouse Co., R. 266, 269, 275.

Appellants: Merchants Warehouse Co., R. 187; Pennsylvania Warehousing & Safe Deposit Co., R. 304–305; Philadelphia Warehousing & Cold Storage Co., R. 309–311.

to the exclusion of others for performance of transportation duties.

But even if it be assumed, *arguendo*, that these services are transportation services, the payment of allowances therefor to appellants and the withholding of similar payments to complainants, who perform the same services under similar circumstances, is an "undue" discrimination, violative of sections 2 and 3 of the act, under the holding in *Union Pacific R. R.* v. *Updike Grain Co.*, 222 U. S. 215. In that case it was shown that the Union Pacific paid allowances to the Peavey elevators for elevating grain in transit, while denying allowances to the Updike Grain Company for performing the same service, through the enforcement of an arbitrary and unreasonable rule. The Commission found this to be an unlawful discrimination. The Court, sustaining the Commission's order, held:

> The carrier can not pay one shipper for transportation service and enforce an arbitrary rule which deprives another of compensation for similar service. To receive the benefit of such work by one elevator without making compensation therefor would, in effect, be the involuntary payment by such elevator of a rebate to the railroad company, for it would enable the railroad to receive more net freight on its grain than was received from its competitor located on the railroad's tracks. This can not be directly done, nor indirectly by means of

regulation. A rule apparently fair on its face and reasonable in its terms may in fact, be unfair and unreasonable if it operates so as to give one an advantage of which another similarly situated can not avail himself. (*Ibid.*, 220.)

The Commission has held to the same effect as the *Updike case* in a great many cases, including *Industrial Railways Case*, 29 I. C. C. 212; *Suffern Grain Co.* v. *Ill. Cent. R. R.*, 22 I. C. C. 178; *Pittsburgh Steel Co.* v. *P. & L. E. R. R. Co.*, 39 I. C. C. 312; *Westport Stone Co.* v. *C., C. C. & St. L. Ry. Co.*, 48 I. C. C. 637; *National Malleable Castings Co.*, v. *P. & L. E. R. R. Co.*, 51 I. C. C. 537; *Sharon Steel Hoop Co.* v. *Penna. Co.*, 51 I. C. C. 454; *Pittsburgh Plate Glass Co.* v. *Director General*, 58 I. C. C. 81; *Buckeye Steel Castings Co.* v. *Hocking Valley R. Co.*, 58 I. C. C. 500.

Interstate Commerce Commission v. *Diffenbaugh and Peavey*, herein called the *Peavey case*, 222 U. S. 42, relied upon by appellants, related to the same elevation situation at Omaha as the *Updike case*. In the beginning the Union Pacific made an exclusive contract with Peavey & Co. for elevation of grain in transit. The decision of this court in the *Peavey case*, standing alone, apparently sustained the exclusive contract, but that interpretation is inadmissible in view of the decision in the *Updike case*, holding squarely that the carrier could not pay one shipper for transportation

service and deprive another of compensation for similar service.

Other cases cited by appellants in support of the carriers' exclusive contracts with them, viz, *Delaware, Lackawanna and Western R. R. Co.* v. *Morristown,* 276 U. S. 182; *Donovan* v. *Pennsylvania Co.,* 199 U. S. 279; *Black and White Taxicab Co.* v. *Brown and Yellow Taxicab Co.,* 276 U. S. 518; *Chicago & New Orleans R. R. Co.* v. *Pullman Southern R. R. Co.,* 139 U. S. 75; *Express cases,* 117 U. S. 1, are inapposite, because in none of those cases was the carrier dealing with a shipper and none of them related to common carrier duties in respect of transportation.

In the *Arbuckle case; United States* v. *Baltimore & Ohio R. R. Co.,* 231 U. S. 274, in which an allowance for performing lighterage service was granted to Arbuckle Brothers and withheld from the Federal Sugar Refining Company, the circumstances surrounding the traffic of the respective shippers were different. Arbuckle Brothers' plant was within the "free" lighterage limits of New York Harbor, whereas the plant of the Federal Company was at Yonkers, beyond the lighterage limits, and there was no duty upon the carrier to lighter its traffic to Yonkers at the "flat" New York rate, or, in lieu thereof, pay the Federal Company for doing so. There is no such difference of circumstances in the case at bar.

The commission's holding in the *St. Louis Terminal case,* 34 I. C. C. 453, is not inconsistent with

its holding in the case at bar, for it is clear that the warehousemen in the *St. Louis case* operated "off-track" freight stations in St. Louis for the carriers, which stations were in good faith kept open to all shippers as public freight stations. This is the test applied in the *Arbuckle case.*

But, both the Commission and the court below found that the services performed by appellants are not transportation services (cf. *Louisville & Nash. R. Co.* v. *United States (Private Car Case)*, — U. S. —, 75 L. Ed. 407, 416, decided Feb. 25, 1931), but are warehouse trade services such as performed by any merchandise warehouse, including those operated by complainants; that the real purpose of the payments is to compensate appellants for the solicitation of traffic, which under the facts in this case cannot lawfully be paid; and that, therefore, the payments are rebates. The evidence in support of these findings is discussed in the next section hereof.

V

The Commission, having found that the services performed by appellants and complainants were not transportation services but instead were warehouse trade services, properly required the carriers to remove the discrimination by stopping the allowances to appellants rather than continuing to pay them to appellants and extending them to complainants and all others similarly circumstanced

Power to make an order requiring a carrier to cease and desist from a discriminatory practice and to prescribe the reasonable and nondiscriminatory

practice to be observed by the carrier in the future is expressly conferred upon the Commission by section 15 (1) of the Interstate Commerce Act. "Whenever discrimination is, in fact, practiced, an order to remove it may issue * * *" *Chicago, Ind. & Louis. Ry.* v. *United States*, 270 U. S. 287, 293.

The issuance of an alternative order, merely requiring the removal of the discrimination, would have left the carriers free to elect whether they would stop paying allowances to appellants or continue paying them to appellants and extend them to all other warehouses similarly circumstanced.[18] The Commission's action in prescribing definitely the manner in which the discrimination should be removed, namely, to stop paying the allowances to the appellants, was proper for the following reasons:

1. The services performed by the appellants and complainants are warehouse trade services, for the performance of which they are entitled to no compensation from the carriers.

2. The allowances were given in consideration of the appellants causing their traffic to be routed over the lines of the respective carriers.

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[18] Compare *United States* v. *Illinois Cent. R. R.*, 263 U. S. 515, 521; *United States* v. *Pennsylvania R. R.*, 266 U. S. 191, 199; *Chicago, I. & L. Ry.* v. *U. S.*, 270 U. S. 287, 292–293; *American Express Co.* v. *Caldwell*, 244 U. S. 617, 624.

1. The services performed by both appellants and complainants are warehouse trade services for the performance of which they are entitled to no compensation from the carriers

Leading and unloading.—That the carriers do not call upon appellants to load or unload general freight and that appellants load and unload only such freight as is shipped to and from their warehouses for their patrons, is clearly indicated by the evidence already cited. It is also clear that the complainants likewise load and unload the freight shipped to and from their warehouses.

It is a general rule of long standing in the United States that shippers are required to load, and receivers to unload, carload freight. In an early case, *Scofield* v. *L. S. & M. S. Ry. Co.*, 2 I. C. C. 90 (1888), the Commission explained why carload rates can be and are lower than l. c. l. rates, one reason being that the carload shipment "is loaded by the shipper and is unloaded by the consignee." Compare *D. L. & W. case*, 220 U. S. 235, 240. In *P. R. R. Co.* v. *Kittanning Co.*, 253 U. S. 319, relating to demurrage charges against a shipper for failure promptly to unload, the court recognized that "the duty of loading and of unloading carload shipments rests upon the shipper or consignee." See also *A. T. & S. F. Ry. Co.* v. *United States*, 232 U. S. 199, 216 and Commission cases there cited; and *Dunnage Allowances*, 30 I. C. C. 538, 542–543.

A few exceptions are made to this general rule. In Official Classification Territory (east of the Mis-

sissippi and north of the Ohio and Potomac) there were only 11 points excepted at the time of the Commission's report in *Loading and Unloading Carload Freight,* 101 I. C. C. 394 (1925) and the Commission's approval of the carriers' proposal there reduced the number to four. Philadelphia is one (*Ibid.,* 396; R. 341, 446). But these exceptions apply only at certain of their public freight stations in Philadelphia; they do not apply to carload freight, bulk or package, shipped to or from public team tracks or private sidetracks. Ex. 100, R. 745, Ex. 101, R. 764, and Ex. 102 contain the names of several hundred business establishments in Philadelphia having private sidetracks connecting with the P. R. R., B. & O., and Reading, and all of these must load and unload their carload freight without any contribution to the expense thereof by the carriers. Railroads have not made it a practice, either by general rule or by exception, to load or unload on private sidetracks. (R. 297–298.)

Section 1 (3) of the Act defines the term "transportation" as including, among other things, "all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported," and par. (4) of the same section provides that carriers shall furnish such transportation "upon reasonable request therefor." These provision give the Commission full jurisdic-

tion over the matters referred to (*Atchison, T. & S. Fe Ry. Co.* v. *United States*, 232 U. S. 199; *Loomis* v. *Lehigh Valley R. R.*, 240 U. S. 43; compare *Director General* v. *Viscose Co.*, 254 U. S. 498), and are to be read in connection with par. (5) of section 1 providing that "all charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, *or in connection therewith*, shall be just and reasonable; and every unjust and unreasonable charge *for such service or any part thereof* is prohibited and declared to be unlawful.

These provisions do not provide that a shipper or receiver of freight who loads or unloads his carload freight transported at the carload rate is entitled as a matter of law to an allowance out of the carload rate for performing that service. In *Loomis* v. *Lehigh Valley R. R.*, 240 U. S. *supra*, the service rendered by the shipper was obviously one connected with the transportation—work done on care to render them suitable and adequate for transportation. Yet the court clearly recognized that there was no absolute legal duty upon the carrier to furnish that service or pay the shipper for performing it. If there had been, the lower court would have had jurisdiction over the shipper's suit for allowances without prior action by the Commission. But the court held that the problem was one directly concerning rate-making, an administrative question for the Commission, which is au-

thorized to determine the reasonableness of rates and the reasonableness of the inclusion or exclusion of particular accessorial services under those rates. In its opinion, rendered by Mr. Justice McReynolds, the Court said:

> An adequate consideration of the present controversy would require acquaintance with many intricate facts of transportation and a consequent appreciation of the practical effect of any attempt to define services covered by a carrier's published tariffs, or character of equipment which it must provide, or allowances which it may make to shippers for instrumentalities supplied and services rendered. In the last analysis the instant cause presents a problem which directly concerns rate-making and is peculiarly administrative. *Atchison, Topeka & Santa Fe Ry.* v. *United States,* 232 U. S. 199, 220. And the preservation of uniformity and prevention of discrimination render essential some appropriate ruling by the Interstate Commerce Commission before it may be submitted to a court. * * * Ample authority has been given the Commission, in circumstances like those here shown, to administer proper relief, and in connection therewith to approve some general rule of action. In so doing it would effectuate the great purpose for which the statute was enacted. (*Ibid.*, 50.)

The rate structure of the country for carload traffic has been built up upon the basis of shippers

loading and consignees unloading freight carried at carload rates. In *Loading and Unloading Carload Freight,* 101 I. C. C. *supra,* the Commission found that the rates had been fixed at a level which did not include the expense of loading and unloading by the carrier, and fixed as reasonable a charge of 2½ cents per 100 pounds, or 50 cents per ton, to be assessed in addition to the line-haul rate, when the carriers performed the loading and unloading of carload package freight. (*Ibid.* 414.)

Evidence in the case at bar showed that the rates to and from Philadelphia have not been at any time since before the passage of the Act to regulate commerce in 1887 increased so as to include anything for the service of loading or unloading at Philadelphia. (R. 331–337.)

The present carload rates being lower than they would be otherwise in consideration of the shippers loading and unloading, to make an allowance for that service to a shipper who has paid the carload rate is equivalent to paying the shipper twice for that service, first by the reduced rate, second by the allowance.

Loading and unloading carload freight, under circumstances similar to those under which appellants and complainants do so at their warehouses, is essentially a shipper service; at least it is one which he must ordinarily perform when he is charged only the carload rate. And it is a service included among those for which the warehouses

make a charge against their customers, the unloading charge sometimes being stated separately as a labor or handling charge. (See Ex. 6, R. 549–555; Ex. 44, R. following 596; compare R. 213, 274.)

Sending of arrival notices.—The evidence establishes that the sending of notices of arrival by appellants and complainants to their customers is a warehouse trade service, and is not, therefore, performed for the railroad. (See Ex. 6, R. 550; Ex. 42, R. opp. 596, R. 220, 271, 274.) The railroad, in connection with each inbound carload, participates in a *carload* transaction which is consummated when the railroad delivers the inbound car to the warehouse company. The railroad makes out a notice of arrival which it sends or gives to the warehouse company. (See R. 327, 350, 371, 422–423; see also Exs. 80 and 96 which show that the waybill, freight bill, arrival notice, and delivery receipt are all struck off at one writing.) Therefore, no activity of the warehouse company displaced that service of sending or giving notices of arrival which was actually performed by the carrier itself. Further, the notices of arrival sent out by the warehouse company were of a form adapted to its private business which differed from the form of arrival notices used by the carrier. (R. 403, 444; Exs. 90, 91, 92, 95, and 97.)

Collection of freight charges.—The carrier of course has a lien on property transported and may refuse to relinquish possession at destination until the freight charges are paid. (Compare Section

3(2) of the Interstate Commerce Act.) It may even require prepayment. No difficulty attends the collection of freight charges, and the carrier is not relieved of the necessity of *receiving* the money in any event. In many cases the warehouse is the only party from whom the carrier can collect its freight charges for the carload shipment. For instance, the Furniture Manufacturers Association of Grand Rapids ships pool cars to the complainant Terminal Warehouse Co. for distribution to the Philadelphia trade. The Association ships these cars to itself in care of the warehouse. They move "Freight Collect" and the warehouse pays the carload freight charges to the railroad, but later collects the freight charges, on a pro rata basis, from the various customers having consignments in the car. (R. 271.) Since the carriers' Rule 14 (Ex. 33, R. 567) provides that only one freight bill shall be issued for a carload shipment, it is obvious that in cases like those just described the warehouse is the only party to whom such freight bill can be issued and the only party from whom the one collection of the freight charges at the carload rate can be collected. Where the warehouse company collects the freight charges it is part of its warehouse trade service and does not, in any event, relieve the carrier of work which it must necessarily do for itself.

Giving 48 hours free time.—Appellants, by virtue of the allowances they receive from the railroads,

are able to give their patrons two days' free storage. They use this concession as an inducement to obtain warehouse business, as indicated by their letters to prospective customers. (Ex. 6, R. 549–555; Exs. 42–47, R. opp. 596; Ex. 50, R. opp. 598.) Complainants, not having the aid of allowances, have lost business because they could not meet that competition. (R. 206–207; 210; 223–224; 236–238; 240–241; 251–252; 277–278; 282–283; Exs. 22 and 25, R. opp. 562.) In some few instances, in order to keep a valuable account, they have accorded the privilege, resulting in skrinkage of their normal profits. (R. 223, 238, 252–253, 278.) In most instances they can not afford to do it. The carriers do not collect any storage charges on freight stored in appellants' warehouses; and it is clear that any freight so stored is stored, not as any part of the railroads' common carrier duties, but as a part of the warehouse service to warehouse patrons, as so strikingly demonstrated by appellants' letters above cited.

The other services alleged to be performed for the carriers, such as checking contents of car, noting condition of seals and of the goods in the car, tallying contents, etc., (R. 376 et seq., R. 398 et seq.) are shipper services, which can not be made the basis for allowances. The complainants do all these things as a necessary part of their warehouse business. (R. 203–204; 219–220; 235–237; 252–253; 270–272; 274; 278–279; 431–432.)

2. The allowances are given in consideration of the appellants causing their traffic to be routed over the lines of the respective carriers

Having in mind that the Pennsylvania, the Baltimore & Ohio, and the Reading are keen competitors for the large, important traffic of Philadelphia, let us examine the contracts between these lines and their allied warehouses, giving attention first to the contracts between the Pennsylvania and the Merchants Warehouse Company. (Ex. No. 1 R. 455–526.) The Merchants Warehouse Company operates 10 warehouses in Philadelphia and there is a separate contract covering each of them. (R. 319.) Each provides that "without the consent of the railroad company the said facilities [of the warehouse company] shall not be extended to traffic passing over other lines." Each further provides that no allowance will be made to the warehouse company "upon freight the movement of which by the railroad has been performed at a switching rate." (R. 456–457; 463–464; 469–470; 473–474; 478; 482; 489–490; 496–497; 504–505; 513–514; 520–521.) These two provisions, taken together, have the following effects: (1) to require the Merchants Warehouse Company to cause both its inbound and outbound freight to move over the Pennsylvania Railroad; (2) to assure the Pennsylvania of a *line-haul* movement as distinguished from a mere switching movement performed at a switching rate. In other words, these two provisions assure the Pennsylvania of the movement

over its lines, at line-haul rates, of all the traffic of the Merchants Warehouse Company. In order to earn its allowance, the warehouse company must cause the shipment to move over the Pennsylvania. Four of the contracts, in addition to the above-mentioned provisions, contain a further provision which obligates the warehouse company—

> "to use all reasonable efforts to secure to the lines of The Pennsylvania Railroad Company's system, * * * all traffic controlled by it or destined to or from the warehouse * * *." (R. 497, 505, 513–514, 521.)

It follows that the larger the business of the Merchants Warehouse Company, the greater the volume of traffic moving over the Pennsylvania. And on account of the free services and the lower warehouse charges which the Merchants is enabled to accord to its customers by reason of the allowances from the Pennsylvania, the Merchants is able to draw business away from its warehouse competitors in Philadelphia, and to secure new business for which its competitors are unable successfully to bid. All of such business obtained by the Merchants moves over the Pennsylvania.

To meet this competitive situation, the Reading has entered into a similar arrangement with a Philadelphia warehouse company. The Reading Company (successor to the Philadelphia & Reading Railway Company, R. 358) in its contracts with the Pennsylvania Warehousing & Safe Deposit Com-

pany (Exhibits Nos. 53 to 56, R. 603–663) agrees to pay allowances to that warehouse company on all traffic transported by it in line-haul service—switch movements are expressly excepted—to and from its warehouses (R. 618, 636, 655), and the warehouse company covenants "to appoint at least one agent who in addition to the general superintendent of the warehousing company * * * shall solicit consignments over the railway company's lines to warehouse, by mail and by personal application to local shippers and consignees; and one of whom shall visit western shippers of flour in September and March of each year * * * for the purpose of securing consignments over the lines of the railway company to and through said warehouse * * *" (R. 614–615, 632–633, 651–652).

Plainly, this provision obligates the warehouse company to solicit traffic for movement over the Reading; it is at the same time a solicitation of business for the warehouse company.

If this warehouse company charged greater warehouse fees than its competitors in Philadelphia, it would stand to lose business, and if it lost it, so would the Reading. In recognition of this fact, the Reading's contracts impose upon the warehouse company the obligation—

> To make the consignees or consignors no other or greater charge or charges for services rendered in handling, receiving, storing or shipping merchandise than are charged for the time being by other warehousing

> companies for similar services upon the lines of the Pennsylvania Railroad, or warehousing companies on the lines of the Baltimore and Ohio Railroad, in the city of Philadelphia, unless the consent of the railway company to make higher charges shall be given in writing; * * * (R. 615, 633, 652.)

A similar provision is contained in the contract between the Reading and the Philadelphia Warehousing & Cold Storage Co. (See Ex. 57, R. 664–692, at R. 689.) This contract also provides (R. 688)—

> that the said payments shall not be made by the Railway Company in respect of any merchandise transported by it for which it shall have only rendered a switching or transfer service to or from other lines of railroad or to or from other warehouses.

Further evidencing the competitive situation is the provision that the allowances to be paid by the carrier to the warehouse company—

> shall be changed from time to time by mutual agreement so as to conform to the course of business at other railroad warehouses in the City of Philadelphia. In case the parties shall fail to agree upon a fair and reasonable increase or diminution of such time or charges, *to meet current competition*, the same shall be determined by arbitration, * * *. (Italics ours.) (R. 688.)

The Baltimore & Ohio has likewise taken action to meet the competitive situation, and agrees to pay allowances to the Pennsylvania Warehousing &

Safe Deposit Company upon all of the carload traffic of that company on which it receives a line haul (R. 714, 717, 738) *but only so long as the other railroads in Philadelphia make similar allowances to competitive Philadelphia warehouses.* Its contract of August 2, 1926, with that company (Exhibit No. 88 R. 734) provides (R. 736):

> * * * the Railroad Companies agree to pay to the Warehousing Company as a terminal allowance for the facilities to be afforded as provided in and by the aforesaid agreements, fifty cents ($.50) per net ton of two thousand (2,000) pounds for every net ton moved into or out of the Twenty-third Street Stores of the Warehousing Company over the lines of the railroads of the Railroad Companies on which they receive a road haul instead of the Thirty-five cents ($.35) per net ton as in said agreements mentioned so long as any other railroad in Philadelphia competitive with the Baltimore and Ohio, shall make similar allowances to other Warehousing Companies in Philadelphia competitive with the Pennsylvania Warehousing and Safe Deposit Company unless sooner estopped from making such allowance by a decision or order of the Interstate Commerce Commission, the Public Service Commission of Pennsylvania, Court of Competent Jurisdiction or by law.[10]

[10] The term "railroad companies" is in the plural because the contract is executed by the B. & O. and by two of its subsidiaries, the Baltimore & Philadelphia Railroad Company and the Schuylkill River East Side Railroad Company.

The B. & O.'s letter dated August 2, 1926 transmitting the above contract to the warehouse company (which letter, R. 737–738, is part of Exhibit No. 88) extends the above-quoted convenant to other warehouses of the Pennsylvania Warehousing & Safe Deposit Company and defines the Philadelphia railroads which are to be considered competitive with the B. & O. as follows:

> * * * in executing and delivering the agreement enclosed, we do so with the understanding that the language of its third paragraph, i. e.
>
> "so long as any other railroad in Philadelphia competitive with the Baltimore and Ohio, etc., * * *" shall be taken to mean and include the Pennsylvania and Philadelphia & Reading Railroads only, * * * (R. 738.)

The above evidence, considered in the light of the record as a whole, supports the Commission's finding that the allowances are paid to these warehouses solely as compensation for solicitation of freight for movement over the lines of the respective carriers. This being so the allowances are unlawful.

In *Lehigh Valley R. R. Co.* v. *United States*, 243 U. S. 444, Sheldon & Co., forwarding agents, by arrangement with the carrier, so far as it was able sent the goods over the carrier's line, and for doing so received from it a varying percentage of the published rates and also a salary. The court, af-

firming the decree of the lower court enjoining such payments as illegal rebates, held:

> If the shipper were the owner an allowance to him of a percentage upon the freight *as an inducement to ship by that line,* however honest and however justifiable on commercial principles, would be contrary to the Act to Regulate Commerce as it now stands. Act of June 29, 1906, c. 3591, sec. 2, 34 Stat. 586, 587, amending sec. 6 of the original act, etc. See also the original Act of February 4, 1887, c. 104, sec. 2, 24 Stat. 379. *Wight* v. *United States,* 167 U. S. 512. But the above cases [*Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. R. Co.,* 220 U. S. 235; *Great Northern Ry. Co.* v. *O'Connor,* 232 U. S. 508] show that the carrier cannot inquire whether the shipper is the owner and therefore the statute expresses a necessary policy when it forbids in universal terms refunding in any manner any portion of the rates specified in the published tariffs or extending to 'any shipper' any privilege not so specified. Of course it does not matter whether the allowance takes the form of a deduction or a cross payment. *Any payment made by a carrier to a shipper in consideration of his shipping goods over the carrier's line comes within the prohibiting words.* (Italics ours.)

The court further held that services rendered by the forwarder to the carrier in maintaining offices, advertising the railroad and soliciting traffic over

it are not services connected with the transportation for which an allowance may be made by the carrier under section 15 (13) of the Interstate Commerce Act, distinguishing *I. C. C.* v. *Peavey*, 222 U. S. 42, which, Mr. Justice Holmes said, "goes to the verge of what is permitted by the act."

The fact that the allowances are covered by contracts does not, of course, affect the application of the law or the power of the Commission to require the carrier to cease paying them upon a finding that they result in violations of provisions of the Interstate Commerce Act. *Louis. & Nash R. R.* v. *Mottley*, 219 U. S. 467; *Chi., Ind. & L. Ry. Co.* v. *United States*, 219 U. S. 486; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 81; *New Haven R. R.* v. *I. C. C.*, 200 U. S. 361; *Chicago & Alton R. R. Co.* v. *Kirby*, 225 U. S. 155; *Phila., Balt. & Wash. R. R.* v. *Schubert*, 224, U. S. 603, 613; compare *United States* v. *United Stock Yards*, 226 U. S. 286, 308–309; *Vandalia R. R.* v. *United States*, 226 Fed. 713 (7th C. C. A.), certiorari denied, 239 U. S. 642; *Northern Cent. Ry.* v. *United States*, 241 Fed. 25 (2nd C. C. A.); *Fourche R. R. Co.* v. *Bryant Lumber Co.*, 230 U. S. 316, 323; *C. of G. Ry. Co.* v. *Blount*, 238 Fed. 292; *C. C. C. & St. L. Ry.* v. *Hirsch*, 204 Fed. 849.

As stated by Mr. Justice Pitney in *O'Keefe* v. *United States*, 240 U. S. 294, 297,

> It is not only within its power, but the law makes it the duty of the Commission to make

orders which shall nullify such practices resulting in rebating or preferences, whatever form they take and in whatsoever guise they may appear.

It is shown in this case that the allowances paid by the three Philadelphia railroads to their several contract warehouses aggregate a large sum annually. To correct the discrimination by extending similar payments to all the other Philadelphia warehouses would materially increase that aggregate. But the railroads could not stop with warehouses; for, if discrimination were to be avoided, allowances would have to be paid to all other shippers and receivers of carload freight upon private sidetracks and public team tracks, in Philadelphia, who load and unload. The carriers have anticipated this—see Exhibit 38–A, R. 593. No doubt the carriers are willing to be relieved of this burden. This would seem to be indicated by their failure to attack the Commission's orders either in this case or in the *Baltimore case*. (Compare R. 232–233.) Of course, if the allowances continue in Philadelphia they will be restored in Baltimore; and they will have to be extended inevitably to many other cities.[17]

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[17] It was testified by Assistant General Freight Agent Funck, of the Pennsylvania, that warehouse freight is now delivered in a great many cities in this country when transported by the Pennsylvania without giving any allowance. (R. 341.)

THE CROSS APPEALS

I

The court below erred in staying the operation of the Commission's order pending appeal

The single question involved in the cross appeals is whether the court below erred in staying and suspending enforcement of the Commission's order pending determination of the appeals by this court. We think the court did so err for the following reasons:

1. It was not shown that the appellant would otherwise suffer irreparable injury. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 672–675. The court below based its stay order, in part, "upon the fact of irreparable injury following its refusal." But at the same time the court recognized that appellants' loss "would be barely more than negligible" if the allowances could be recovered after a reversal of the final decree. (R. 94.) The Commission had found, as a fact, that the services performed by the appellants, for which the allowances were paid, were warehouse trade services, such as performed by any merchandise warehouse. It follows from this fact that even though the allowances were stopped the appellants would continue to perform these services, as part of their private business activities. If, then, the Commission's order requiring cessation of these allowances were held invalid by this Court on the ground that the Commission erred in finding as a fact that the services were trade

services and not transportation services, the appellants could have readily recovered all allowances on shipments moving in the meantime, either by the voluntary act of the carriers, or by proceedings before the Commission under section 15 (13) or by suit in court. Thus the injury, if any, which the appellants would suffer by reason of the denial of the stay would not in any event have been irreparable.

2. No bond was required by the court to indemnify the warehouse companies suffering the discrimination pending determination of the appeal. Section 210, Judicial Code, 36 Stat. 1150 (U. S. Code, Supp. III, Title 28, Section 47a) provides (substituting "District Court" for "Commerce Court" as in the code):

> Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

In the *Virginian case, supra,* it was held that the district courts, as well as the Supreme Court or a justice thereof, have power to allow such stays, but the necessity for a bond remains. Cf. *Beaumont, S. L. & W. Ry.* v. *United States,* 282 U. S. 74, 91. The only bonds required of appellants in the case

at bar were the usual appeal bonds securing costs. (R. 106, 822, 879.)

Since the railroad companies which practiced the discrimination were not parties to the litigation, apparently to require a bond was impracticable. Liability for damages suffered pending appeal by the complainant warehouse companies arising out of the discrimination was upon the railroad companies and not upon appellant warehouses. Hence, no indemnity bond, such as contemplated by Section 210 of the Judicial Code, could be required of appellants. But this did not permit the statutory requirement of a bond to be waived. Rather it seems to indicate that under the circumstances the stay should have been denied. And it seems but to illustrate the lack of standing of appellants to maintain the suit.

3. The finding of the District Court that the allowances were rebates should have precluded the issuance of a stay. By the stay the court sanctioned the continued payment of what it itself, as well as the Commission, had found to be rebates.[18] No complaint is made of the action of the court in issuing the temporary stays of the Commission's order until the court could reach a decision. But when, after hearing and full consideration, as indicated by its opinion, the court determined and concluded that the allowances were unlawful rebates,

[18] In the *Baltimore case*, too, where the facts were parallel, the Commission and the Maryland court found the allowances were rebates.

its action in permitting the continuance of them, instead of stopping their payment at once, seems clearly erroneous.

4. The granting of the stay was contrary to the policy of the law to afford prompt relief in discrimination cases. The prohibition of inequalities among shippers is perhaps more fundamental and vital than any other feature of the Interstate Commerce Act. The vital necessity to a shipper of rates equal to those of his competitor often transcends even the importance of reasonable rates. "The evil of discrimination was the principal thing aimed at" by the Interstate Commerce Act. *Shreveport case,* 234 U. S. 342, 356. In recognition of this evil and of the detriment and injury to a business subjected to continued prejudice and disadvantage because of discriminatory rates, the law has provided for prompt and effective relief. The legislative intent is manifested by section 3 of the Elkins Act (32 Stat. 847, 34 Stat. 584, U. S. Code Title 49, sec. 43), which provides—

> That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, *or is committing any discriminations forbidden by law,* a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity having jurisdiction;

> * * * whereupon it shall be the duty of the court summarily to inquire into the circumstances, * * * without the formal pleadings and proceedings applicable to ordinary suits in equity, * * * and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs *or direct and require a discontinuance of such discrimination* by proper orders, writs, and process, * * * subject to right of appeal as now provided by law.

The stay orders of the court below squarely oppose the policy and purpose of the law in dealing with rebates and discriminations, for, manifestly, the legislative intention is to stop discriminations immediately, and to deprive the shippers receiving them of the unlawful benefits and advantages thereof during the period required for determination of their appeals from the injunction of the District Court, whereas the stay orders in this case permit appellants to continue receiving the allowances and the benefits of the discrimination pending determination of the appeals.

Unavoidably, a long period of time elapses between the date of the filing of a complaint with the Commission and the final determination of the controversy by this Court. If it becomes an established practice for the district courts to grant stays pending appeals, it will mean that the shipper who has proved the discrimination in the Commission proceeding must continue to suffer the prejudice and

disadvantage, if indeed he can continue in business under that handicap, until the absolute end of the litigation, though the validity of the Commission's order is upheld by the district court. It would seem that where, as in this case, virtually the only ground for granting the stay was doubt as to the validity of the order, the doubt should be resolved in favor of the shipper who has been found by two tribunals to be suffering the prejudice, rather than in favor of the advantage holder.

CONCLUSION

It is respectfully submitted that the decree of the court below dismissing the petitions for want of equity should be affirmed and that the decrees below staying the operation of the Commission's order pending appeal should be reversed.

THOMAS D. THACHER,
Solicitor General.
JOHN LORD O'BRIAN,
The Assistant to the Attorney General.
J. STANLEY PAYNE,
Assistant Chief Counsel,
Interstate Commerce Commission.
ELMER B. COLLINS,
Special Assistant to the Attorney General,
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission,
Of Counsel.

APRIL, 1931.

APPENDIX

The Interstate Commerce Act provides:

SEC. 1 (3) * * * The term "transportation" as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported. * * *

SEC. 1 (4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, * * *

SEC. 1 (5) All charges made for any service rendered or to be rendered in the transportation of passengers or property or in the transmission of intelligence by wire or wireless as aforesaid, or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: * * *.

SEC. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for

any service rendered, or to be rendered, in the transportation of passengers or property or the transmission of intelligence, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation or transmission of a like kind of traffic or message under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

SEC. 3. (1) That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

SEC. 3. (2) No carrier by railroad subject to the provisions of this Act shall deliver or relinquish possession at destination of any freight transported by it until all tariff rates and charges thereon have been paid, except under such rules and regulations as the Commission may from time to time prescribe to govern the settlement of all such rates and charges and to prevent unjust discrimination: *Provided,* That the provisions of this paragraph shall not be construed to prohibit any carrier from extending credit in connection with rates and charges on freight transported for the United States, for any department, bureau, or agency thereof, or for any State or

Territory or political subdivision thereof, or for the District of Columbia. Where carriers by railroad are instructed by a shipper or consignor to deliver property transported by such carriers to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of such property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in the property, and (b) prior to delivery of the property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of the property. In such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges, irrespective of any provisions to the contrary in the bill of lading or in the contract under which the shipment was made. * * * If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges, nothwithstanding the foregoing provisions of this paragraph. * * *

SEC. 6. (7) No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the

rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

SEC. 10. (1) That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet

therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided,* That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

SEC. 10. (2) Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

SECTION 15. (1) That whenever, after full hearing, upon a complaint made as provided in section 13 of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative, either in extension of any pending complaint or without any complaint whatever, the Commission shall be of opinion that any individual or joint rate, fare, or charge whatsoever demanded, charged, or collected by any common carrier or carriers subject to this Act for the transportation of persons or property or for the transmission of messages as defined in the first section of this Act, or that any individual or joint classification, regulation, or practice whatsoever of such carrier or carriers subject to the provisions of this Act, is or will be unjust or unreasonable or unjustly discriminatory or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate, fare, or charge, or rates, fares, or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged (or, in the case of a through route where one of the carriers is a water line, the maximum rates, fares, and charges applicable thereto), and what individual or joint classification, regulation, or practice is or will be just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist, and shall not thereafter publish, demand, or collect any rate, fare, or charge for such

transportation or transmission other than the rate, fare, or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.

SEC. 15. (13) If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered, or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

The Elkins Act provides:

SEC. 1. That any thing done or omitted to to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changes. The will-

ful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition

to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

SEC. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said

court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States whenever the Attorney General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce" and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or

produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.

The Judicial Code provides:

SEC. 210. A final judgment or decree of the Commerce Court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a district court of the United States to the Supreme Court, and the Commerce Court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the Commerce Court as the case may require. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the Commerce Court appealed from, unless the Supreme Court or a justice thereof shall so direct; and appellant shall give bond in such form and of such amount as the Supreme

Court, or the justice of that court allowing the stay, may require. An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the Commerce Court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree. Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

U. S. GOVERNMENT PRINTING OFFICE: 1911

SUPREME COURT OF THE UNITED STATES.

Nos. 635-643.—October Term, 1930.

Merchants Warehouse Company, Appellant,
635 *vs.*
The United States of America, Interstate Commerce Commission, and James Gallagher, et al.

Merchants Warehouse Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., Appellants,
636 *vs.*
The United States of America, Interstate Commerce Commission, and James Gallagher, et al.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al., Appellants,
637 *vs.*
Merchants Warehouse Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia.

The Pennsylvania Warehousing and Safe Deposit Company, Appellant,
638 *vs.*
The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al.

The Pennsylvania Warehousing & Safe Deposit Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., Appellants,
639 *vs.*
The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al., Appellants,
640 *vs.*
The Pennsylvania Warehousing & Safe Deposit Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia.

The Philadelphia Warehousing & Cold Storage Company, Appellant,
641 *vs.*
The United States of America, Interstate Commerce Commission, and Rex & Company, Inc., et al.

Philadelphia Warehousing & Cold Storage Company, The Commercial Exchange of Philadelphia, Philadelphia Board of Trade, et al., Appellants,
642 *vs.*
The United States of America, Interstate Commerce Commission, and Rex & Company, Inc., et al.

The United States of America, Interstate Commerce Commission, and Walter A. Bailey, et al., Appellants,
643 *vs.*
The Philadelphia Warehousing & Cold Storage Company, The Commercial Exchange of Philadelphia, Grocers' & Importers' Exchange of Philadelphia.

Appeals from the District Court of the United States for the Eastern District of Pennsylvania.

[May 18, 1931.]

Mr. Justice STONE delivered the opinion of the Court.

These are appeals under § 238 of the Judicial Code, from a decree of a District Court of three judges for Eastern Pennsylvania, dismissing the bills of complaint by which appellants, warehousing corporations doing business in Philadelphia, sought to set aside an order of the Interstate Commerce Commission. 44 Fed. (2d) 379. The order required the Reading Company and the Pennsylvania and Baltimore & Ohio railroads, interstate rail carriers, to cancel such provisions in their tariffs as purported to make the warehouses of appellants in Philadelphia a part of the station facilities of the carriers, and directed that they cease and desist from making allowances to appellants in connection with the loading and unloading of package freight at the latter's warehouses. There are also cross appeals from an order of the District Court staying the order of the Commission pending disposition of the appeals in this Court.

The three railroads load and unload package freight at their stations in Philadelphia. The Pennsylvania and Baltimore & Ohio railroads have designated some of appellants' warehouses as parts of their station facilities there. All three have contracts of long standing with one or more appellants, under which the latter, at their warehouses, afford facilities and perform services, in connection with the loading and unloading of package freight, which they denominate terminal facilities and services, and for which the railroads pay them a stipulated compensation. In the case of the Pennsylvania, provision is made for this allowance in its published tariff.

Six warehouse companies, appellees, which also maintain warehouses in Philadelphia with private railroad sidings connected with one or another of the three railroads, and are competitors of appellants, instituted proceedings before the Interstate Commerce Commission, in which they assailed the terminal service contracts referred to as unjustly discriminatory and unduly preferential, and the payments made under them as unlawful rebates. Numerous merchants' organizations of Philadelphia intervened in the proceedings, which were consolidated and heard as a single cause, and resulted in the order before us. 160 I. C. C. 563.

The Interstate Commerce Commission and the court below found the facts as already stated and also the following: Carload freight,

carried at carload rates, is customarily loaded and unloaded by the owner or consignee, as required by Rule 27 of the Consolidated Freight Classification, filed under § 6 of the Interstate Commerce Act, with the binding force of a tariff schedule. By exceptions to the classification, the railroads undertake, as a part of the transportation service covered by their tariffs, to load and unload carload package freight at their Philadelphia freight stations, except when handled directly to or from cars on team tracks. At their warehouses appellants load and unload cars and perform other services presently to be referred to, for which the railroads compensate them by the challenged allowances. These services do not differ in substance from those which the competing warehouses render. Both handle the same classes of freight and procure its shipment to or from them by advertising in trade publications and in circulars to prospective customers. Shippers using public warehouse facilities generally select the company offering the lowest aggregate charge for the distribution of their goods, and, by reason of the allowances made, the contract warehouses are able to quote lower prices than their competitors, thus securing business which would otherwise go to the latter. The primary motive for the payment of the allowances to the contract warehouses is to gain traffic, and the allowances are compensation to appellants for their solicitation of freight movements over the lines of the carriers.

The Commission and court also found as follows: Appellants' warehouses, while nominally open to the general public as railroad freight stations, are not in fact public stations, but are confined to the warehousing of merchandise for their patrons. The services which they perform in connection with loading and unloading of freight, including the sending of arrival notices to their patrons after receipt of notice of arrival from the railroad, the collection of freight charges, and other incidental matters, are in fact performed for the owners of the merchandise rather than for the railroads. While the contract warehouses are not owners of goods received or shipped, the dealings of the railroads are with them and not with the owners of the goods; and as to many of the inbound carload shipments, the contract warehouses are the only parties to whom delivery of the goods could be made as carload shipments, the real owners being concerns which ship carload merchandise to appellants for distribution by them in less than carload lots. The contract warehouses, being given dominion over the merchandise for

transportation purposes, are to be deemed consignors of shipments from, and consignees of shipments to, their warehouses.

Appellants do not seriously contend that the challenged allowances are not discriminatory in fact, but maintain that the discrimination is one which the law permits. While conceding that the contract warehouses and their patrons, by virtue of the contracts and allowances, gain important business advantages over their competitors, they insist that the advantages are those which flow exclusively from the fact that the contract warehousemen are agents of the carriers in the performance of transportation services, and that since the railroads may properly perform such services at their own stations and include charges for them in their filed tariffs, they may likewise select the warehouses of appellants as stations, perform the services there, and employ and compensate the warehousemen for doing them. As these contentions do not comport with the findings of the Commission and the court below that the contract warehouses are not in fact open public freight stations, and that the services rendered are not transportation services, those findings are sharply challenged as without support in the evidence.

We may assume that the railroads, in order to carry on their business as interstate carriers, are not bound to maintain their own freight stations, but may contract with others to supply them and to perform there the transportation services which they are under a duty to perform. *Arbuckle Case, United States* v. *Baltimore & Ohio R. R.*, 231 U. S. 274. If appellants' warehouses were held out to the public by the carriers, and used exclusively, as freight stations, and the services rendered there were exclusively transportation services which the carriers were either bound or permitted to render, the case would lack those elements which appellees urge as challenging the right of the carriers to make the allowances to appellants. They say that the warehouses of appellants are devoted to their private business activities in the storage, distribution and assembling of freight for their patrons before or after its rail transportation, and that the alleged transportation services are but a part of these activities, not differing from those performed by other warehouses for their patrons as a part of their warehousing business. Appellees contend that the designation of them as transportation services, only when performed at warehouses of appellants, enables the carriers to discriminate in favor of appel-

lants, at the expense of their competitors, by compensating for them in that guise, or, what is the same thing, by extending to appellants at their warehouses the benefit of transportation services withheld from their competitors.

We think, as the court below held, that the Commission's finding that appellants' warehouses are not in fact public freight stations, is supported by the evidence. As already indicated, they are owned or controlled by appellants and used by them as storage and distribution warehouses located on private premises, served by private side tracks. They are not leased to the railroads. There is no provision in the contracts between the carriers and the warehousemen which suggests that the warehouses were regarded or intended to be treated by either as freight stations. There was evidence that apart from the designation of the warehouses as stations in the tariffs, they were neither held out nor treated as such by carriers or appellants, nor known as such generally to shippers or to representative trucking companies engaged in the business of handling freight in Philadelphia. Pamphlet instructions by the railroads to their employees list their public freight stations in Philadelphia; but list appellants' warehouses as private industries served by private side tracks. None of the appellants acted as freight agents for the carriers or issued bills of lading. While there was evidence of shipment from appellants' warehouses of freight delivered to them by truck or previously stored there, it did not appear that any shipments were made except for those who were patrons of the warehouses. There were instances where freight brought by truck to contract warehouses and tendered by non-patrons for shipment over the road serving them were rejected on the sole ground that the warehouses were not freight stations, and the intending shippers were instructed by those in charge to tender the shipment at a "freight station" of the carrier.

This and other evidence, which it is unnecessary to review at length, supports the conclusion of the Commission that appellants' warehouses are not in fact public freight stations; that the services performed there by appellants do not differ from those performed by their competitors; and that their designation as freight stations was nominal only, the real purpose being the compensation of appellants for soliciting freight shipments over the lines of the carriers. See *O'Keefe* v. *United States*, 240 U. S. 294, 303. This evid-

ence distinguishes the present case from the *Arbuckle Case, supra,* on which appellants rely; cf. *Terminal Warehouse Co.* v. *United States,* 31 Fed. (2d) 951. The credibility of witnesses and weight of evidence are for the Commission and not for the courts, and its findings will not be reviewed here if supported by evidence. See *Interstate Commerce Commission* v. *Louisville & Nashville R. R.,* 227 U. S. 88, 92, 100; *United States* v. *Louisville & Nashville R. R.,* 235 U. S. 314, 320; *Assigned Car Cases,* 274 U. S. 564, 580, 581.

Even though appellants' warehouses are not public freight stations, the questions remain whether the services for which the allowances are made, are transportation services for which the carriers may lawfully compensate, and if they are, whether the carriers may discriminate by granting such compensation to appellants and not to others. Under the contracts those services begin with the receipt for shipment of outgoing freight (the contract with the Reading Company applies only to inbound freight) and with the unloading of the cars of inbound freight. They end with loading for shipment of outgoing freight and, in the case of inbound freight, with the expiration of the forty-eight hour period of free time during which the carrier allows freight to remain at its freight stations, without charge, before delivery to the consignee, or with the delivery, during the period, of the freight on the truck platform of the warehouse. From the expiration of that period, freight not delivered is held by appellants either under such warehousing agreements as they may make with owners or consignees or, in the absence of such agreements, as undelivered freight stored with them by the carriers for the account of the owners.

During this period, they perform three important items of service, not to mention minor ones which, for present purposes, may be disregarded, but for all of which together the allowances are made. They load and unload cars; they may store the freight or some of it; and, what is of vital importance, so far as the present issues of discrimination and rebating are concerned, they may assemble package freight of less than carload lots and ship it in carloads at carload rates, and distribute or reship, in less than carload lots, a large amount of package freight, carried in carloads at carload rates.

Addressing ourselves first to the nature of this third item of service, we note that the rates of the three railroads for transporta-

tion of freight in carloads are substantially lower than for package freight in less than carload lots. By Rule 23 of the Consolidated Freight Classification, the carriers may not distribute carloads of freight in less than carload lots, nor assemble smaller lots into carloads. By Rule 14, the carriers confine their service with respect to carload shipments to one consignor and one consignee. The service rendered by appellants' warehouses in distributing and assembling package carload freight is thus one which a carrier is not authorized or permitted to render, even at its own public freight stations, and if performed by it would nullify its published rates for carload transportation service. See *New Haven R. R.* v. *Interstate Commerce Commission*, 200 U. S. 361.

But it is a service which inures to the benefit of shippers by securing delivery to them or their customers in less than carload lots of package freight which is transported at carload rates. When rendered, as it largely is, within the forty-eight hours free time, that benefit is without expense to appellants or their patrons since it is included in the service for which the carriers pay. A substantial part of the inbound freight, varying from 35% to 80% at the different contract warehouses, is delivered or shipped from them within the forty-eight hours free time. The amount of the allowances paid during the four years preceding the hearing aggregated more than $809,000; and the conclusion is inescapable that a very large part of the total is for the service of breaking up and distributing carloads in less than carload lots, which the carriers could not lawfully perform at their own public freight stations. Examination of the evidence can leave no doubt that it is the performance of this service, free of charge, to shippers, featured in appellants' advertising and solicitation of patronage, which induces the consignment of freight by shippers to them over the lines of the carriers and withdraws the business from competing warehouses. Such allowances are forbidden, even though paid to appellants and their competitors alike, since, as to both, they would be departures from carload rates of the published tariffs of the carriers and amount to rebates forbidden by §§ 2 and 3 of the Interstate Commerce Act. See *Lehigh Valley R. R.* v. *United States*, 243 U. S. 444, 446; *United States* v. *Union Stock Yard*, 226 U. S. 286, 307.

Apart from this consideration, the practical effect of the arrangement with appellants is that the carriers extend, in the form

of money allowances to the favored warehousemen, forty-eight hours' free time, during which carload freight is unloaded at their places of business, stored, and distributed in less than carload lots, all at the expense of the carriers—a privilege which they withhold from other competing warehousemen and from shippers who maintain their own private warehouses on industrial tracks or private sidings. Granted that the carriers might lawfully undertake to perform or pay for some of these services at warehouses served by private side tracks, they may not extend the privilege to some and withhold it from others. Section 2 forbids the carrier to discriminate by way of allowances for transportation services given to one, in connection with the delivery of freight at his place of business, which it denies to another in like situation. *Union Pacific R. R. Co.* v. *Updike Grain Co.*, 222 U. S. 215, 220. Appellants rely on *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, but it is distinguishable from both the present and the *Updike* case in that it did not involve discrimination among shippers or consignees, which was condemned in the latter.

Where a forbidden discrimination is made, the mere fact that it has been long continued and that the machinery for making it is in tariff form, cannot clothe it with immunity. See *Louisville & Nashville R. R. Co.* v. *Interstate Commerce Commission*, — U. S. —, decided February 24, 1931. In that case we held that a carrier may not haul private cars of some of its passengers free of charge and deny the privilege to others on the theory that it is using the cars which it carries free, as instrumentalities of transportation. The very selection of the cars of some passengers and not others for the favored treatment was held to be a forbidden discrimination. The order of the Commission upheld there would be futile if discrimination could still be effected by filing an exception to the carrier's tariffs for hauling private cars, designating some private cars as transportation facilities, and then granting allowances to the owners for their use. That, in substance and practical operation, is the effect of the tariff exceptions and the allowances which the present order forbids.

Only a word need be said of the objection that appellants and their competitors are not shippers and that the relationship between them and the carriers is not one subject to control by the Commission. The warehouse companies are "persons" authorized to

lodge a complaint with the Commission by § 13 (1) of the Interstate Commerce Act, and they are "persons" within the meaning of that word as used in §§ 2 and 3 of the Act. The relationship between persons and rail carriers, with which the Commission is authorized to deal, is not formal, and is not to be determined exclusively by reference to bills of lading. In point of substance the warehousemen were consignors and consignees of merchandise, and they alone could act as such in the case of carload shipments which they assembled or distributed. In this respect they do not differ from freight forwarders who render a like service, so far as concerns their relations with the carriers. *Lehigh Valley R. R.* v. *United States, supra*; see *Interstate Commerce Commission* v. *Delaware, Lackawanna & Western R. R.*, 220 U. S. 235; *Great Northern Ry. Co.* v. *O'Connor*, 232 U. S. 508. The evil of discrimination was the principal thing aimed at by the Act, see *Louisville & Nashville R. R. Co.* v. *United States, supra*, p. 8, and its language is certainly broad enough to embrace all discriminations of the sort described which it was within the power of Congress to condemn. *Shreveport Case*, 234 U. S. 342, 356. Section 3 makes it unlawful for any rail carrier "to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever. . . ."

For reasons already indicated the case is not one in which, as appellants argue, the carriers should be left free to remove the discrimination by extending the benefit of the allowances to the competing warehouses. Since the allowances are for services which include the assembling and distribution of carloads from or into less than carload lots, the objections to them would not be removed by extending them to some additional shippers of carloads at carload rates, but not to all, nor even to all under existing tariffs and classifications for the handling of carloads. As the Commission found that appellants' warehouses are not public freight stations in fact but are such in name only, it rightly secured the discontinuance of the discrimination by ordering the carriers to cease employing the means by which it had been accomplished. *New Haven R. R.* v. *Interstate Commerce Commission, supra*, p. 404. But nothing said here is to be taken as indicating that a carrier may not designate a warehouse as a public freight station and select an

agent for its management where a forbidden discrimination is not effected.

The court below was within the limits of its discretionary power in staying the Commission's order pending the appeal. The practice complained of was of long standing, entered into, so far as appears, in good faith, at a time when the discrimination, if it existed, was much less serious than at present, and before the present prohibitions against such discriminations. Its legality now is not free from doubt, as is indicated by the fact that the judges of the court below were not unanimous. The immediate enforcement of the order if the judgment below were not affirmed here would have resulted in a serious and unnecessary disturbance of a course of business affecting not alone the parties to this litigation, but the patrons of the various warehouses, which the court below found would be irreparable. These considerations, taken together, were sufficient to call for the exercise of its discretion. Cf. *Virginian Ry. Co.* v. *United States*, 272 U. S. 658, 672.

Affirmed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.